ONTARIO

INQUIRY RE MAGISTRATE FREDERICK J. BANNON AND MAGISTRATE GEORGE W. GARDHOUSE

Commissioner

THE HONOURABLE MR. JUSTICE CAMPBELL GRANT

Ont. Commissions and committees of
Inquiry] Commission of Inquiry re Magistrate
Frederick J. Bannon and magistrate
George W. Gardhouse

[Report]
1968

INQUIRY RE

MAGISTRATE FREDERICK J. BANNON

AND

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[Seal] 

PROVINCE OF ONTARIO

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

TO THE HONOURABLE CAMPBELL GRANT, One of the Justices of Our Supreme Court of Ontario,

GREETING:

WHEREAS in and by Chapter 323 of the Revised Statutes of Ontario, 1960, entitled "The Public Inquiries Act", it is enacted that whenever Our Lieutenant Governor in Council deems it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein and such inquiry is not regulated by any special law, he may, by Commission appoint one or more persons to conduct such inquiry and may confer the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as the commissioner or commissioners deems requisite for the full investigation of the matters into which he or they are appointed to examine:

AND WHEREAS Our Lieutenant Governor in Council of Our Province of Ontario deems it expedient to cause

inquiry to be made concerning the matters hereinafter mentioned:

NOW KNOW Ye that We, having and reposing full trust and confidence in you the said the Honourable Campbell Grant DO HEREBY APPOINT you to be Our Commissioner

> to inquire into and report upon the circumstances respecting the behaviour or misbehaviour of Magistrate Frederick J. Bannon and respecting his ability or inability to perform his duties properly including his associations with a person known as Vincent Alexander and other persons.

AND WE DO HEREBY CONFER on you, Our said Commissioner, the power to summon any person and require him to give evidence on oath and to produce such documents and things as you Our said Commissioner deem requisite for the full investigation of the matters into which you are appointed to examine.

AND WE DO HEREBY FURTHER ORDER that all Our departments, boards, commissions, agencies and committees shall assist you, Our said Commissioner, to the fullest extent in order that you may carry out your duties and functions and you shall have the authority to engage such counsel, investigators and other staff as you deem proper at rates of remuneration and reimbursement to be approved by the Treasury Board of Our Province of Ontario.

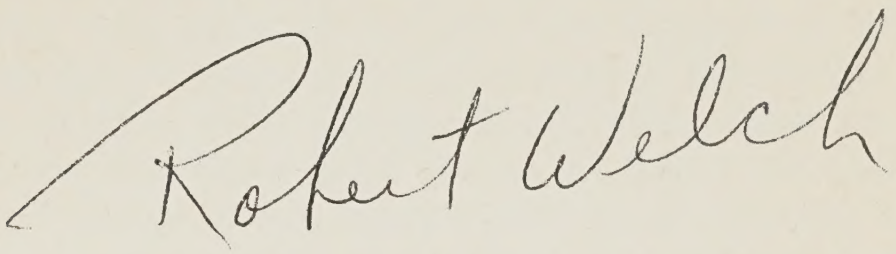
TO HAVE, HOLD AND ENJOY the said Office and authority of Commissioner for and during the pleasure of Our Lieutenant Governor in Council for Our Province of Ontario.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS: THE HONOURABLE WILLIAM EARL ROWE, A Member of Our Privy Council for Canada, Doctor of Laws, Doctor of Social Science,
LIEUTENANT GOVERNOR OF OUR PROVINCE OF ONTARIO

at Our City of Toronto in Our said Province, this twenty-sixth day of June in the year of Our Lord one thousand nine hundred and sixty-eight and in the seventeenth year of Our Reign.

BY COMMAND



PROVINCIAL SECRETARY AND
MINISTER OF CITIZENSHIP

OC-2594/68

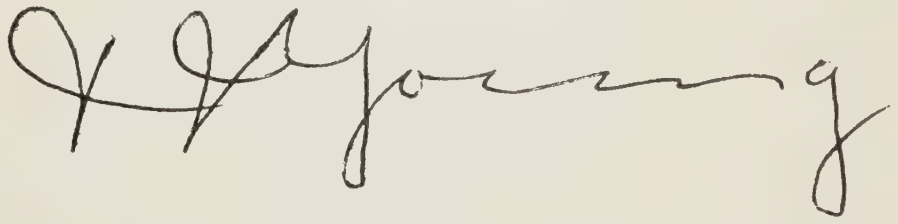
Copy of an Order-in-Council approved by His Honour the Lieutenant Governor, dated the 26th day of June, A.D. 1968.

Upon the recommendation of the Honourable the Minister of Justice and Attorney General, the Committee of Council advise that pursuant to the provisions of The Public Inquiries Act, R.S.O., 1960, Chapter 323, a Commission be issued appointing the Honourable Campbell Grant, One of Her Majesty's Justices of the Supreme Court of Ontario, a Commissioner to inquire into and report upon the circumstances respecting the behaviour or misbehaviour of Magistrate Frederick J. Bannon and respecting his ability or inability to perform his duties properly including his associations with a person known as Vincent Alexander and other persons.

The Committee further advise that pursuant to the said Act, the Honourable Campbell Grant shall have the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as he deems requisite to the full examination of the matters into which he is appointed to examine.

And the Committee further advise that all Government Departments, Boards, Agencies and Committees shall assist the Honourable Campbell Grant to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage such counsel, investigators and other staff as he deems proper at rates of remuneration and reimbursement to be approved by the Treasury Board.

Certified,



Clerk, Executive Council.

OC-2593/68

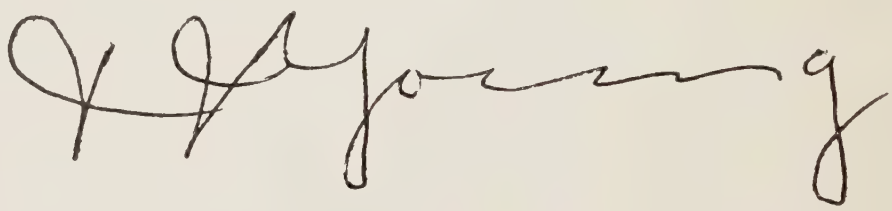
Copy of an Order-in-Council approved by His Honour the Lieutenant Governor, dated the 26th day of June, A.D. 1968.

Upon the recommendation of the Honourable the Minister of Justice and Attorney General, the Committee of Council advise that pursuant to the provisions of The Magistrates Act, R.S.O. 1960, Chapter 226, the Honourable Campbell Grant, One of Her Majesty's Justices of the Supreme Court of Ontario, be appointed to inquire into and report upon the circumstances respecting the behaviour or misbehaviour of Magistrate George W. Gardhouse and respecting his ability or inability to perform his duties properly, including his associations with a person known as Vincent Alexander and other persons.

The Committee further advise that pursuant to the said Act, the Honourable Campbell Grant shall have the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as he deems requisite to the full examination of the matters into which he is appointed to examine.

And the Committee further advise that all Government Departments, Boards, Agencies and Committees shall assist the Honourable Campbell Grant to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage such counsel, investigators and other staff as he deems proper at rates of remuneration and reimbursement to be approved by the Treasury Board.

Certified,



Clerk, Executive Council.

To His Honour,
The Lieutenant Governor of Ontario,

May It Please Your Honour,

I, the undersigned, Campbell Grant, one of Her Majesty's Justices of the Supreme Court of Ontario, appointed Commissioner by Order-in-Council OC-2594/68 pursuant to the provisions of The Public Inquiries Act, R.S.O. 1960, c. 323, to inquire into and report upon the circumstances respecting the behaviour or misbehaviour of Magistrate Frederick J. Bannon and respecting his ability or inability to perform his duties properly, including his associations with a person known as Vincent Alexander and other persons, and further appointed Commissioner by Order-in-Council OC-2593/68 pursuant to the provisions of The Magistrates Act, R.S.O. 1960, c. 226, to inquire into and report upon the circumstances respecting the behaviour or misbehaviour of Magistrate George W. Gardhouse and respecting his ability or inability to perform his duties properly, including his associations with a person known as Vincent Alexander and other persons:

Beg to Submit to your Honour
The Following Report.

Campbell Grant J.

Commissioner

September 12, 1968.

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INTRODUCTION

As many of the facts and circumstances presented to me in evidence were common to the inquiry directed under each of such Orders-in-Council, I found it more convenient and expeditious to conduct both inquiries in the one hearing. Counsel appearing for all parties were content with this course of procedure. Although the greater portion of the evidence had reference to the inquiry as to the conduct of Frederick J. Bannon and did not pertain to Magistrate Gardhouse, I experienced no difficulty in segregating the testimony so that it was considered only as to the person to whom it related and was properly admissible in respect thereof. I am convinced that neither of such persons suffered in any way by reason of such form of hearing. To have held separate inquiries would have involved extensive repetition and prolonged hearings. All interested parties were represented by able and experienced counsel who properly protected the interests of their respective clients but who were not unmindful of their obligation as solicitors to assist the Commission in ascertaining the true facts which pertained to the inquiry and administration of justice. I find it preferable therefore to make a combined report concerning the matters which I was directed to investigate and report upon by such Orders-in-Council. I propose dealing with my findings as to Magistrate Bannon first, and latterly with Magistrate Gardhouse. As I will make reference to the leading characters herein on many occasions, for the purpose of brevity only I will refer to them hereafter by their surnames.

QUALIFICATIONS OF FREDERICK J. BANNON

Frederick J. Bannon was born in 1934 and has always lived in Toronto. He graduated from the University of Toronto in 1956 and from Osgoode Hall in 1960. He thereafter worked as a junior for George W. Gardhouse in the latter's law office for a period of five months. He then took an appointment as a junior Crown Attorney in York County until February 1963, when he returned to private practice and shared office space with Gardhouse until the latter's appointment as a Deputy Magistrate in March 1964. At that time he took over such newly appointed Magistrate's practice. He also acted as Assistant Crown Attorney at Richmond Hill until his appointment as a Magistrate on December 20th, 1967, to become effective on February 1st, 1968. When he was advised by the Chief Magistrate that he could not thereafter appear in Court as either Crown or defence counsel, he asked that his appointment be advanced to become effective on January 1st, giving as his reason that he would have nothing to do in the interval. His request was granted and an appropriate amending order-in-council was passed. He has been married seven years, and has two of a family.

DESCRIPTION OF VINCENT CHARLES ALEXANDER

Vincent Charles Alexander is a man 44 years of age without a trade or profession. When asked as to his business he replied he made his living the best way he could. At one time he worked with his father who carries on a wholesale fruit business in Toronto, but he has not been associated with him in such enterprise for a number of years. The record of his criminal convictions is as follows:

"1943, Feb. 5.	Toronto, Ont.	1. Theft auto. 2. Housebreaking and theft (2 charges) — 3 months each charge concurrent by Magistrate McNish.
1948, Jan. 8.	Toronto, Ont.	Attempt theft — 30 days by Magistrate Bigelow.

1952, Nov. 26.	Toronto, Ont.	Shopbreaking with intent—2 years less 1 day by Judge Factor.
1956, June 7.	Toronto, Ont.	Shopbreaking and theft—3 years by Judge Shea.
1964, Aug. 27.	Toronto, Ont.	Theft — Fined $250. or 2 months Jail (14 days to pay) by Magistrate Gardhouse."

Since March 9th, 1959 until November, 1966 he was convicted of non-indictable offences as follows: three breaches of The Liquor Control Act, three offences of being found in a gaming house and three breaches of The Highway Traffic Act which involved suspension of his driving privileges and later driving while his licence to do so was suspended. In evidence he stated that the police seemed to be interested in him at all times. He frankly admitted that he had held himself out to those facing criminal charges as one who had influence with magistrates and others whereby he could obtain adjournment of cases and generally influence magistrates in their decisions and obtain special consideration in the courts for persons who were charged with criminal offences. For this purpose he promoted a relationship with public officials wherever possible to impress others that he had such ability and influence. His practice was to contact such persons before they engaged a lawyer. The first step was to mislead the victim with a greatly exaggerated estimate of the sentence that would ordinarily be meted out for such an offence. The accused was then assured that this could be greatly reduced by providing to Alexander funds which would be used to influence the magistrate towards dismissing the charge or taking a very lenient view of the facts and sentence to be imposed. The sum requested was fixed by the extent to which the victim could be intimidated and the amount it was possible for him to produce. Alexander usually undertook to engage the lawyer and pay him from the amount he had so secured. This was necessary to the success of the scheme because a respectable solicitor would not have participated in the defence in such circumstances, but would have felt obliged to have exposed the fraud.

Tapes reveal many conversations between Alexander and one Charles Pasquale Bagnato who appears to be associated with the former in some of the above described efforts. He has a criminal record, including theft, keeping a common gaming house and recording and receiving bets.

Conversations between one Walter "Heavy" Andrews and Alexander also are heard on such tapes, from which it appears that Andrews is also involved in bringing accused to Alexander to use his influence in the police courts, and in such cases there is a division of the money secured from the accused between them. In a conversation between the two of them on March 25th concerning someone who had been charged with impaired driving, Andrews discusses with Alexander how much it would cost, and how much they will have to divide between themselves. At this time the latter indicated to Andrews that he was the only one who had such influence to arrange matters, and as far as the evidence herein would indicate apparently Alexander was the only one who approached Bannon directly in connection with the matter.

It is difficult to ascertain the extent to which such practice had extended. Even if the accused later became aware that he had been victimized he could do little about it without laying himself open to other charges. There were few other sources that could bring knowledge of such transactions and pretences to law enforcement officers. Alexander could not collect on such fraudulence extensively without eventually showing some accomplishment in his pretensions. The only evidence of Alexander's activities in this respect that were brought before me were those cases referred to in telephone conversations. One would not expect that arrangements for such matters would originate or be discussed ordinarily by telephone, but that the parties would seek more exclusive premises for such purpose. It may therefore be that there were many more attempts made by Alexander to persuade accused of the extent of his influence in such courts, and even more cases where he had succeeded in such persuasion. His own evidence indicated he made as much as he could of these endeavours. However, as far as the evidence of these inquiries indicates, it is more probable that such endeavours on his part

commenced only after the appointment of Bannon as a magistrate and the extent to which it had grown is problematical. He said he wanted to foster his association and relationship with Bannon for the purpose of furthering the impression of his influence. He attempted at all times to keep his association with Bannon from the knowledge of police authorities. When he called such magistrate at his office and not finding him in, wanted him to call back, he would leave a false name but his proper telephone number with the secretary. When Bannon came to visit him he showed some hesitancy about the magistrate's automobile being parked near his residence, because he said the police were always, to use his term, snooping about. He gave his testimony frankly as to matters disclosed on such tape without attempting to contradict the phraseology or its meaning. He did not divulge further evidence not already in the hands of the police. His testimony at all times was marked with a desire to protect Bannon against any interpretation of events that would be injurious to him. He is a clever, cunning individual who covers his true character with a smile and a show of friendliness. It is clear from his own testimony that his livelihood is gained by means contrary to the law. The evidence and his record lead me to believe that his participation is not in the field of organized crime, but that he may participate by guiding and directing younger persons in areas of breaking and entering, thieving and similar offences.

TAPPING OF ALEXANDER'S TELEPHONE

Roy Soplet, an Inspector of the Toronto Metropolitan Police Force in charge of the Intelligence Bureau and under the immediate control of the Chief of Police to whom he reports directly, testified that from January 1st of this year there was a marked increase in burglaries in Metropolitan Toronto, and that his department had experienced marked difficulty in controlling such outburst of this particular form of crime and had little success in solving the same. Investigations led to reasonable grounds for believing that Alexander was responsible for burglaries of premises protected by burglar alarms in which the protective system had been tampered with so that the alarm would not sound or be effective. He

had investigated Alexander on many occasions. He found he associated frequently with one who had technical knowledge of the manner in which such devices were constructed and operated. Such officer came to the conclusion that Alexander was using the knowledge he had acquired as to such alarm system to assist in burglaries. Their efforts to find evidence involving him in such activities sufficient to lead to conviction were unsuccessful. In a further attempt to secure evidence of Alexander's participation in such crime wave, and also to obtain information as to further plans or arrangements made for such offences, the Toronto Metropolitan Police placed wiretaps or listening devices on the terminals of Alexander's telephone line. This was done without the permission or knowledge of the Bell Telephone officials. It operated in such a way that as soon as the earphone was lifted from its cradle a recording was automatically made on a tape of all conversations over the telephone until the cradle was replaced. The mechanical system employed enabled the police to ascertain the telephone from which the call came and, if it was an outgoing call, the number which was called. This system of eavesdropping on all telephone calls to or from that residence was maintained from March 31st of this year until May 27th. Telephone conversations over that telephone in that period of time recorded on the police tape take sixty hours to replay. A great proportion of such conversations pertain to other matters which were of no relevance to criminality and of no help to the police. For the purpose of cutting the recordings down to reproduce only conversations which related to Alexander's criminal activities or to matters which are relevant to this inquiry, a master tape was prepared which contains only such conversations. Care was exercised to ensure that sufficient of the dialogue was included that the context or meaning was not altered. This was done after this inquiry was directed and in preparation for the hearing before me.

During the early part of such surveillance it became apparent that there were frequent calls between Bannon and Alexander relating to cases that were pending and which were generally of such a character as demanded investigation. The contents of these conversations were communicated to the Senior Magistrate who suspended both such Magistrates from

holding any further court until further permitted. Transcript of such master tape was supplied to counsel for such magistrates and other persons who may be affected by this inquiry. The master tape was also played back to such counsel for the purpose of identifying the voices and conversations recorded thereon with such transcript. Such interested parties were also furnished with copies of statements of witnesses to be called by Commission counsel. This was done prior to the hearing so that ample preparation therefor might be had by all parties. Such procedure by Commission counsel was not only helpful to such others but had the effect of expediting the hearing and all parties were thereby acquainted with knowledge of matters that otherwise would have been obtained by numerous and probably lengthy cross-examinations.

RESIGNATION OF FREDERICK J. BANNON

At the opening of the hearings, counsel for Bannon read and filed a copy of a letter that he had that day sent to The Honourable Arthur A. Wishart, Q.C., M.P.P., Attorney General for the Province, whereby he tendered his resignation as a magistrate. Such letter was not intended to and did not limit the scope of the inquiry. The same was as follows:

"

81 Markham Road,
Richmond Hill, Ontario.
July 15, 1968.

The Honourable Arthur A. Wishart, Q.C., M.P.P.,
Attorney General, Province of Ontario,
Parliament Buildings,
Toronto, Ontario.

Dear Mr. Attorney:

I herewith tender my resignation as a Magistrate for the Province of Ontario—an office to which I was appointed by Order-In-Council in December, 1967.

Wide spread publicity was given to the announcement that no further courts were, for the time being, to be assigned to me. This in turn gave rise inevitably to suspicion and speculation. Further, it was indiscreet of me to have continued to associate, after my appointment, with Mr. Vincent Alexander. In the result this combination of factors has impaired my usefulness as a Magistrate to a degree that it would be improper for me to continue to act in that capacity

regardless of the conclusion reached by the Commissioner—The Honourable Mr. Justice Grant—with regard to my conduct.

The transition that is involved when one ceases to act as a member of the Bar and begins to serve as a Magistrate creates very great difficulties which, regrettably, I did not succeed in solving. A lawyer's relationship with a client may in some cases be impersonal, but in others may develop into a friendship which it is difficult abruptly to terminate on one's appointment. This presented me with my greatest problem.

My decision in resigning is not to be taken as meaning that I wish in any way to restrict the scope of the public enquiry which is now about to begin; on the contrary it is my hope that the fullest investigation will be made of my behaviour. If it is, I have no reason to doubt that you and the Commissioner as well as the members of the public will all be fully satisfied that my conduct was not tainted either by corruptness or by criminality.

I have served the Province of Ontario as a Crown Attorney for some years prior to my appointment as a Magistrate, and during my tenure of office in both of these capacities I tried to discharge my duties with dignity, courtesy, humanity, and above all with honesty and integrity. I have always kept uppermost in my mind the best interests of the community, and have been zealous in my determination to safeguard the rights of the individuals who were required by unfortunate circumstances to appear before me.

To the extent that the unfortunate indiscretion of my association with Mr. Alexander may have occasioned feelings of disappointment or embarrassment to you and to my colleagues on the Magistrates' Bench, it goes without saying I have the deepest feelings of regret.

Notwithstanding the present unfortunate difficulty, I trust that neither you nor they will lose your confidence in my integrity, and you can all feel assured that my future conduct will fully vindicate your present faith in me.

I have directed that this resignation be delivered to your office at 10 a.m. on this date, and I have instructed my counsel, Mr. Arthur Maloney, Q.C. to inform Mr. Justice Grant of the course I have taken to read this letter to him in the enquiry and to file a copy of it as an exhibit.

Yours respectfully,
'Frederick J. Bannon'
Frederick J. Bannon."

BANNON'S KNOWLEDGE OF ALEXANDER'S ACTIVITIES

Magistrate Gardhouse had never acted or transacted any business for Alexander while he was practising as a solicitor. He had defended the latter's father on an impaired driving charge in the year 1960. Thereafter he occasionally saw Alexander and the latter on occasions had referred cases to him, but at no time was there ever any association between them other than of a very casual nature. Bannon first met Alexander in August, 1967. At that time Alexander and one Stoutley were each charged with breaking and entering premises known as the Busy Bee. Both such accused came together to see Bannon about acting for Stoutley. Alexander already had engaged a lawyer. He says he told Bannon of his criminal record at this time. Between then and December 28th such two accused came in together to see Bannon some twelve or fourteen times to discuss the charges against Stoutley. He also saw him on the occasion of the many adjournments of the case and discussed the evidence with them before making the decision as to Stoutley pleading guilty. Alexander says as a result of these meetings they became friendly. Stoutley was sentenced to three years in penitentiary. Alexander elected trial by judge and jury, was committed for trial but his case has not yet been reached.

Bannon in his testimony has stated that he had not known of Alexander's criminal record except as to an old charge in which he was involved ten or twelve years before. He says he rather enjoyed him, had lunch with him and that he always acted like a gentleman and that those with whom he associated were persons of good character, and he had never seen him in the company of persons he believed to be of a criminal character.

Bannon describes the evidence against Alexander in respect of this charge as scant. In view of the fact that Alexander came with Stoutley to see Bannon on so many occasions prior to Stoutley's plea of guilty to such charge and discussed the case with him, I find it difficult to believe he regarded Alexander as a person of the character he described even at that early period in their relationship. His experience gained as a

Crown Attorney should have indicated otherwise to him. One also wonders why Alexander came with Stoutley on all these occasions to see Bannon if he had no association with the alleged offence. Bannon would have one believe that he did the various acts hereinafter recorded for Alexander for the sole reason that he liked him and he was a friend, but the various conversations recorded between them does not indicate a social relationship existing. Their recorded communications are mostly in reference to manipulation of charges existing against various persons who had become involved with Alexander. Their wives had never met. They had little in common. Alexander is a man with limited learning. They were of different social standings. Bannon knew of the various criminal charges laid against the man he insists was only a friend. He says that Hachey and St. Louis, convicted of keeping gaming houses, were friends of Alexander. He still allowed Alexander to relate the alleged facts of the case to him prior to it coming on for trial before him. He says as a result of the information as to the case that he had so received it was a shock to him when they pleaded guilty. He acknowledges that later in conversation with Alexander in the Lucky Garden Restaurant he said, "I almost died when they pleaded guilty". His explanation of this given in evidence is as follows:

> "I am referring to the fact that I had not anticipated a plea of guilty at that time. We are rehashing that case, I would think, and I did not expect a plea of guilty at that time in view of the facts that had been related to me."

When asked if he meant facts related to him by Alexander, he answered in the affirmative.

Bannon had secured a different and unlisted telephone number. On March 31st he gave this to Alexander on the understanding it would not be given to anyone else. In his evidence Bannon acknowledged that by April 15th his association with Alexander from the first of the year indicated to him that Alexander was involved in some criminal matters and associating with criminals. He also admits that by April 20th he knew that Alexander was taking money from these persons involved with the law for his services in attempting to get them preferred treatment before the courts. This knowledge, however, did not deter him or dampen the relationship that he

terms purely friendly. Subsequent to that he secured mortgage monies from Miss Garbutt in the manner hereinafter referred to, and also entered into the land purchase and sale in equal partnership with Alexander and put up the latter's share of the funds for the initial investment. On May 8th he made arrangements to meet Alexander at the latter's home in interviews that lasted from 2.50 p.m. until 5.55 p.m. Despite what Bannon says to the contrary, I am convinced by his own testimony at this inquiry and his various actions and associations with Alexander, that from a time shortly after his appointment as a magistrate until he was suspended, he was well aware of Alexander's criminal character and his improper activities and pretences of influence about the criminal courts.

ADMISSIBILITY OF EVIDENCE RECEIVED BY POLICE WIRETAPPING

A large part of the evidence available to the hearing was that obtained by Toronto Metropolitan Police secretly tapping the telephone lines which led to the residence of Alexander during the period from March 31st to May 27th. Wiretapping, in ordinary parlance, means the listening in by technical contraptions to a telephone conversation between other persons. An unauthorized wiretap is one to which neither conversant has consented. Electronic eavesdropping, as the phrase is commonly used, means the auditing of a conversation through the use of electronic equipment.

There existed widespread interest as to whether evidence obtained in such a manner should be admitted. Suggestions have been made that I should include recommendations which might lead to the problem of the admissibility of such evidence being settled by statutory enactment. It should be understood that any rulings I have made in respect of such testimony were limited to the receptivity of proof of matters pertinent to the terms of reference only. I am entirely without authority to do other than that. It would be presumptuous on my part to make recommendations or decisions in this hearing generally, or attempt to define the law as it now stands except to the extent that it is necessary to make rulings as to admissibility of evidence tendered herein.

In the execution of an inquiry of this type less formality is observed in the conduct thereof than if it were the trial of a proceeding in an established court. The Commissioner is not bound to observe the strict rules of evidence that a judge must respect in a trial. In *Re The Children's Aid Society of the County of York,* [1934] O.W.N. 418, Middleton J. A. at page 421 outlines the obligation of the commission as follows:

> "It is an inquiry not governed by the same rules as are applicable to the trial of an accused person. The public, for whose service this Society was formed, is entitled to full knowledge of what has been done by it and by those who are its agents and officers and manage its affairs. What has been done in the exercise of its power and in discharge of its duties is that which the Commissioner is to find out; so that any abuse, if abuse exist, may be remedied and misconduct, if misconduct exist, may be put an end to and be punished, not by the Commissioner, but by appropriate proceedings against any offending individual."

In the same case Riddell J. A. stated at page 420 as follows:

> "A Royal Commission is not for the purpose of trying a case or a charge against any one, any person or any institution—but for the purpose of informing the people concerning the facts of the matter to be inquired into. Information should be sought in every quarter available. . . . Nor are the strict rules of evidence to be enforced; much that could not be admitted on a trial in Court may be of the utmost assistance to the Commission."

Counsel for both Magistrates at the outset of the hearing informed the Commission that they were instructed by their clients not to interpose any objections of a technical nature in the introduction of any evidence which might be considered relevant and admissible in the inquiry. They chose not to put Commission counsel to the strict proof of the tape recordings by requiring that the chain of possession of the tape be established, nor proof as to how or by whom they were obtained. They did not concede that the transcripts were entirely correct, nor did they wish to concede that evidence so obtained was ordinarily admissible, but they did not make any issue of what they termed an illegality in the procurement thereof. Such concessions on the part of such counsel expedited proceedings and as well relieved the Commission from calling

many officers of the Intelligence Branch of such police force who had participated in the procuring of such recorded testimony and whose identity would have rendered their future service less valuable to such police force.

Counsel for Alexander objected to the admission of such tape recorded testimony on the ground that it would be prejudicial to such party in the trial by jury of the charges against him which are still not disposed of. He alleged that such testimony might not be admitted at such trial and to make it public now would be a great injustice to his client. In such circumstances one must determine whether its value to this investigation exceeds the harm that may ensue to Alexander by its admission. For the purpose of deciding whether I should admit such tape recording as evidence, and the weight that should be attached to such testimony, I found it helpful to examine cases in our courts where tape recordings, although not obtained by wiretapping, had been admitted, and the practice in other courts pertaining to testimony procured by wiretapping without consent of the conversants.

Tape recorded evidence has been admitted as evidence in cases tried in Ontario. In *Reliable Toy Co. Limited and Reliable Plastics Co. Limited v. Collins,* [1950] O.R. 360, Mr. Justice Wilson of the Ontario High Court of Justice, admitted in evidence tape recordings of the conversations with the defendant taken without his knowledge but which were not on the telephone. A microphone had been placed in the room where the conversations had taken place and the recording machine in the one adjoining. It was satisfactorily established that the recordings had not been tampered with after being made and the voices of those taking part in the conversations were identified. This was a civil action for an injunction restraining the defendant from disclosing trade secrets of the plaintiff.

It has also been allowed in criminal cases. In *Regina v. Foll* (1956), 19 W.W.R. 661, affirmed on appeal (1957), 21 W.W.R. 481, in a trial on a charge of breaking and entering, the Crown sought to adduce in evidence a tape recording machine and a tape recording of conversations alleged to have been in the voice of the accused. The machine had been set

up and set in motion, not by the police, but by the accused's employer whose premises had been broken into. After hearing testimony on a *voir dire,* and after concluding that the tape recording had not been revised or interfered with in any way and that the voice recorded was that of the accused, Mr. Justice Freedman of the Queen's Bench Division of the Manitoba Supreme Court admitted the testimony. The provisions of sections 36 and 37 of the Manitoba Telephone Act, 1955, c. 76, which prohibit wiretapping of telephone conversations, were held to have no significance in the case. Part of the recording was that of the accused speaking over the telephone. The microphone was in the same room as the speaker and so it was not intercepting or listening to messages passing along, over or through lines or wires of the system and the same recording would have been obtained if the receiver had not been removed from its cradle. Such decision was affirmed in the Manitoba Court of Appeal in the citation above given.

In a further case of *Regina v. Sommervill,* [1963] 3 C.C.C. 240 at pages 257-258 the Saskatchewan Court of Appeal affirmed the trial Judge's admission of the tape recording. This had been a charge of offering a bribe to a police officer. Culliton C. J. S. in giving the judgment of the Court stated at page 258:

> "I also adopt as a correct statement of the principles governing the admissibility of tape recordings of a conversation, the statement of Mr. Clive K. Tallin, in his article in 35 Can. Bar Rev. 558, when he said at p. 563:
>
> 'If the authenticity of the recording is established, the court is satisfied that it is a true and unaltered recording of what was said, without additions or deletions, and if the voices recorded are properly identified with those of parties to the case, any recorded conversation otherwise admissible will be admissible'."

In an article entitled, "The Admissibility of Tape Recordings in Criminal Proceedings", by R. E. Auld, [1961] Crim.L.R. 598, at pp. 599-600 the learned author had this to say:

> "What better evidence could there be where, as in cases of blackmail, bribery, threats, inducement to commit a crime,

and sedition, the speaking of the words recorded itself constitutes the offence? It is similar to photographs of an offender caught red handed in the act of murder or housebreaking. Recordings of conversations in these circumstances have repeatedly been held by English and American courts to be admissible."

There always exists the probability that evidence of this nature may be tampered with by deleting parts and thereby altering the meaning. It is also important to establish its identification with the accused. However, these are features which are not peculiar to tape recording only and are not of themselves sufficient to exclude it. Special care must be exercised in its proper proof. For this reason the procedure to be followed to have this type of evidence admitted in a criminal case is for a *voir dire* to be held and the Crown should establish the following points:

1. Before use, the tape was magnetically cleaned and played over and found clear.
2. The machine was in proper working order and, as ancillary thereto, it must be established that:
   (a) the party charged spoke the words at a certain time into the microphone;
   (b) the sending apparatus was capable of effective transmission to a particular spot;
   (c) at that spot was a receiving apparatus capable of effectively reproducing the utterance starting from the sending apparatus;
   (d) at the receiver, a witness heard, reproduced at the time in question, the words uttered into the microphone.
3. The tape was not tampered with or altered in any way which involves proof of continuity of possession of the tape.
4. The officers played the tape over after taking the recording and heard voices which they can identify, it being established as a matter of law that:
   (a) a person's opinion as to things about a person including the identity of a voice is admissible in evidence;
   (b) a witness may testify as to a person's identity from his voice alone.

The above matters emphasize the care that must be exercised in the preparation and presentation of tape recordings. The cases cited above do not entirely cover the objection made by Mr. Humphrey on behalf of Alexander as to the admissibility of the tape recordings, in that none of them were instances where such evidence was obtained by interception of conversations over a person's private telephone, commonly called wiretapping. He urges that such an act is an offence, as being contrary to s. 25 of The Bell Telephone Company Act (Dominion), 43 Vict. (1880) c. 67, which reads as follows:

> "Any person who shall wilfully or maliciously injure, molest or destroy any of the lines, posts or other material or property of the Company, or in any way wilfully obstruct or interfere with the working of the said telephone lines, or intercept any message transmitted thereon, shall be guilty of a misdemeanor."

If such section has any application to the actions of the police officers in obtaining such evidence, it could only be by virtue of the word "intercept". The Oxford English Dictionary, 1933 ed., VI, p. 385, defines the word "intercept" as "to cut off from the destination aimed at; to stop the material course of; to intercept, break in upon (e.g. a narrative or a person speaking); to prevent, stop, hinder."

The usual type of wiretapping does not intercept communications but is expressly designed for undetectible overhearing or recording of conversations without interruption of communication.

Section 112 of The Telephone Act, R.S.O. 1960, c. 394, reads as follows:

> "Every person who, having acquired knowledge of any conversation or message passing over any telephone line not addressed to or intended for such person, divulges the purport or substance of the conversation or message, except when lawfully authorized or directed so to do, is guilty of an offence . . ."

The Act not only does not make it an offence to listen in to a conversation over the telephone, but this section by implication, makes it legal when it says that everyone who having acquired knowledge of any conversation passing over any telephone line not addressed to or intended for such person, is

guilty only if the purport or substance of the conversation is divulged—except when he is lawfully authorized or directed so to do. The nature of such lawful authorization or direction, and the persons who are entitled to grant it or receive it, are nowhere defined. A case of a person being lawfully authorized to divulge a conversation or message under such Act might well be that of a person summoned to court and being called to give evidence of such conversation if it was relevant to the matter being tried. The Royal Canadian Mounted Police are charged under s. 18(a) of the Royal Canadian Mounted Police Act, 7-8 Eliz. II, c. 54, with the general duty, "to perform all duties" assigned to them for "prevention of crime . . . and the apprehension of criminals and offenders". The Ontario Provincial Police and members of the municipal police forces in Ontario are similarly charged by s. 43(1)(a) and s. 47 of The Police Act, R.S.O. 1960, c. 298. In determining whether such evidence would be admissible in a court of law, it is not necessary to decide whether under such circumstances such officers had committed a breach of any statute in obtaining the same. It is well settled law in Canada and England that the proper test to apply in determining the admissibility of such evidence is whether it is relevant to the matters in issue. If it is admissible, the court is not concerned with how it is obtained. The leading authority on this statement of the law is *Kuruma, Son of Kaniu v. The Queen*, [1955] A.C. 197. In that case the accused was charged with being in unlawful possession of ammunition contrary to regulation 8A(1)(b) of the Emergency Regulations, 1952, of Kenya. Two police officers of lesser rank than assistant inspectors had searched the accused and found ammunition on his person. The regulations permitted only officers of such rank to make such a search without warrant and the two officers in question had no right to intercept or search the accused. Accordingly such evidence was obtained illegally. Lord Goddard in giving the reasons of the Judicial Committee of the Privy Council stated at p. 203:

> "In their Lordships' opinion the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained. While this proposition may not have been stated in so many

words in any English case there are decisions which support it, and in their Lordships' opinion it is plainly right in principle."

And also at p. 204:

"No doubt in a criminal case the judge always has a discretion to disallow evidence if the strict rules of admissibility would operate unfairly against an accused. This was emphasized in the case before this Board of *Noor Mohamed v. The King,* [1949] A.C. 182, 191-2; 65 T.L.R. 134; [1949] 1 All E.R. 365, and in the recent case in the House of Lords, *Harris v. Director of Public Prosecutions,* [1952] A.C. 694, 707; [1952] 1 T.L.R. 1075; [1952] 1 All E.R. 1044. If, for instance, some admission of some piece of evidence, e.g. a document, had been obtained from a defendant by a trick, no doubt the judge might properly rule it out. It was this discretion that lay at the root of the ruling of Lord Guthrie in *H.M. Advocate v. Turnbull,* 1951 S.C. (J.) 96. The other cases from Scotland to which their Lordships' attention was drawn, *Rattray v. Rattray* (1897) 25 Rettie 315, *Lawrie v. Muir,* 1950 S.C. (J.) 19 and *Fairley v. Fishmongers of London,* 1951 S.C. (J.) 14, all support the view that if the evidence is relevant it is admissible and the court is not concerned with how it is obtained. No doubt their Lordships in the Court of Justiciary appear at least to some extent to consider the question from the point of view whether the alleged illegality in the obtaining of the evidence could properly be excused, and it is true that Horridge J. in *Elias v. Passmore,* [1934] 2 K.B. 164; 50 T.L.R. 196, used that expression. It is to be observed, however, that what the judge was there concerned with was an action of trespass, and he held that the trespass was excused.

In their Lordships' opinion, when it is a question of the admission of evidence strictly it is not whether the method by which it was obtained is tortious but excusable but whether what has been obtained is relevant to the issue being tried. Their Lordships are not now concerned with whether an action for assault would lie against the police officers and express no opinion on that point.

Certain decisions of the Supreme Court of the United States of America were also cited in argument. Their Lordships do not think it necessary to examine them in detail. Suffice it to say that there appears to be considerable difference of opinion among the judges both in the State and Federal courts as to whether or not the rejection of evidence obtained by illegal means depends on certain articles in the American

> Constitution. At any rate, in *Olmstead v. United States* (1928), 277 U.S. 438, the majority of the Supreme Court were clearly of opinion that the common law did not reject relevant evidence on that ground."

Such dictum, however, recognizes the right of a trial judge to exclude evidence, otherwise admissible, which might operate unfairly against an accused. This obligation of a trial judge is described in the case of *Noor Mohamed v. The King*, (*supra*), where Lord Du Parc, delivering the judgment of the Judicial Committee of the Privy Council, said at p. 192:

> ". . . that in all such cases the judge ought to consider whether the evidence which it is proposed to adduce is sufficiently substantial, having regard to the purpose to which it is professedly directed, to make it desirable in the interest of justice that it should be admitted. If, so far as that purpose is concerned, it can in the circumstances of the case have only trifling weight, the judge will be right to exclude it. To say this is not to confuse weight with admissibility. The distinction is plain, but cases must occur in which it would be unjust to admit evidence of a character gravely prejudicial to the accused even though there may be some tenuous ground for holding it technically admissible. The decision must then be left to the discretion and the sense of fairness of the judge."

In *Attorney-General of Quebec v. Begin*, 112 C.C.C. 209, the Supreme Court of Canada followed and reiterated the principles above set forth in the judgment in the *Kuruma* case.

Such principle is also enunciated by the Lord Chancellor, Viscount Simon, who, in the House of Lords decision in *Harris v. Director of Public Prosecutions*, [1952] A.C. 694, said at p. 707, it is "the duty of the judge when trying a charge of crime to set the essentials of justice above the technical rule if the strict application of the latter would operate unfairly against the accused."

It is this discretion which permits a trial judge to exercise extensive control over the admissibility of evidence obtained by practices which are considered by him to be unfair. Difficulty arises in the application of such rule.

In a more recent decision in our own Ontario Court of Appeal of *Regina v. Steinberg*, [1967] 1 O.R. 733, where the

charge was one of unlawfully keeping a common betting house and engaging in betting, the police secretly installed a recording device in the accused's premises. A tape recording of his voice obtained from the device was admitted at his trial. In appeal it was urged on his behalf that the installation was an infringement of his right to enjoyment of his property protected by s. 1(a) of the Canadian Bill of Rights, 8-9 Eliz. II, c. 44, and that it compelled him to give evidence when he had been denied protection against self-incrimination contrary to s. 2(d). Aylesworth J. A. in giving the judgment of the court stated at pp. 734-735:

> "The main issue in the appeal before us turns upon submission by appellant that he was improperly convicted because of the conduct of the police in obtaining certain evidence. The evidence thus obtained is inadmissible, it is said, by reason of that conduct. That certain evidence was by way of a tape recording obtained in the following circumstances:
>
> On August 11, 1966, under search warrant, the accused's premises were searched and certain material subsequently tendered as evidence was seized, the accused arrested, charged and later released on bail. The police officers took advantage of their visit to the premises upon that date under the search warrant, which is in the usual form, to plant an electronic device in a room in the accused's premises and, previously or concurrently, they had arranged for the presence near the premises of sound recording devices in what may be referred to as a sound truck. Perhaps I should have added that the tape recording, according to the evidence, was a recording of the voice of the accused person and occurred either on August 11th or 12th, the police having revisited the premises on August 12th and having upon that occasion retrieved the electronic device which they previously had planted.
>
> Ample authority makes it clear that in general the method of the obtaining of evidence does not affect its admissibility, the question in such cases being the relevance of the tendered evidence, but it is said that matters in this regard have been altered legally by the provisions of what is known as the *Canadian Bill of Rights* enacted by 1960 (Can.), c. 44, and the provisions of that enactment relied upon by the appellant are ss. 1 (a) and 2 (d). I shall quote those two provisions:
>
> '1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or

sex, the following human rights and fundamental freedoms, namely,

(a) [and I now paraphrase] the right of the individual to enjoyment of property.'

Section 2(d), somewhat paraphrased, provides as follows:

'2. Every law of Canada shall, unless expressly declared otherwise be so construed and applied as not to abrogate or authorize the abrogation of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

(d) authorize a court to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards;'

It is said here that what the police did, and as I have described what they did, is an infringement of the right of the accused to the enjoyment of his property as provided in s. 1 (a) of the statute, and it is further submitted that what was done was to compel the person to give evidence when he had been denied protection against self-crimination. We do not construe either of these sections of the statute I have quoted as applicable to or governing the facts at bar and in our view, the conviction upon the evidence complained of properly was recorded. It is our further view that altogether separate and apart from that evidence there was sufficient other evidence, the admissibility of which is not denied, to uphold the conviction."

The reception of wiretapping evidence first came before the Supreme Court of the United States in 1928 in a case of *Olmstead v. United States, (supra)*. By a decision of five to four the rule was laid down that evidence obtained by federal officers through tapping telephone wires, even though in violation of a state's statute, might be used in a criminal prosecution in the United States. In such decision the court invited Congress to enact legislation to exclude wiretapping evidence as it was thought such a result might be achieved more readily by statute. As a result, in many of the areas of the United States wiretapping and electronic eavesdropping then became the subject of legislation. Interplay between federal and state law is illustrated by reference to the law of New York State. When such evidence is secured by technical means which do not amount to a trespass on the premises of the person affected, wiretapping is not contrary to the Fourth Amendment, and

evidence obtained in this manner is admissible in either federal or state prosecutions unless a statute intervenes. In federal prosecutions, the intervening statute is s. 605 of the Federal Communications Act, which is as follows:

> ". . . no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; . . ."

Although the statute contains no exclusionary rule of evidence, the Supreme Court ruled in *Nardone et al v. United States,* 302 U.S. 379, that evidence obtained by an unauthorized wiretap was inadmissible in federal prosecutions. The statute does not define the terms "intercept" and "disclose", nor does it explicitly recognize any area of activity that is immune from its proscription. However, the Federal Bureau of Investigation does carry out wiretapping operations in those areas it regards as especially serious or as affecting the national security. It justifies these wiretaps by a conventional understanding that if information so obtained is not divulged from the witness stand during a trial, there is no violation of the statute. Such exculpation, however, is not universally accepted in all United States courts. In New York wiretapping is forbidden except by court order which can be obtained only by a law enforcement officer who complies with the procedure set out in the Act. Substantially the same safeguards are attached to the issuance of a wiretap order as are required for the issuance of search warrants. Evidence procured through an unauthorized wiretap is inadmissible for any purpose in any civil or criminal action, proceeding or hearing.

As the law of the United States, s. 605 of the Federal Communications Act (above quoted), applies to state police officers as well as federal. It contains no section permitting a wiretap authorized by state law. It would appear therefore there is some conflict of authority between the federal and state law in New York. In the second *Nardone* case, 308 U.S. 338, the Supreme Court ruled that not only the communications intercepted by an illegal wiretap, but also any evidence obtained as a result of information produced through the wiretap, must also be excluded from evidence in federal courts. It would

appear that the rule of admissibility of evidence obtained by wiretapping in the United States has taken a different course than in Canada and England by reason of such statute law. While the above cases and statutes are helpful, it remains to decide whether under all the circumstances of this case this evidence should now be received and thereby made public to the detriment and embarrassment of Alexander at his future trials. On the other hand, the public are entitled to be informed as to the true facts in connection with this matter which affect the administration of justice in York County and the City of Toronto. The two conflicting interests exist and both cannot be satisfied. In determining admissibility in such a situation one should balance and weigh the different factors and consideration should be given to which is the more important. One must seek to maintain a proper balance between the rights of the individual and those of society generally. On the one hand the right to privacy ought not to be lightly interfered with nor should there be any infringement on the constitutional right of any person regardless of what his record as a citizen has been. On the other hand, no one should have a right to remain free from police surveillance in order to enable him safely to commit acts prohibited by society through criminal laws. In our present case, Alexander was using the telephone as an instrument to advance his admittedly ill-devised attempts to thwart the ends of justice. The recorded conversations form part of his efforts. Without such evidence very few of the actual facts which are the concern of this inquiry would have come to light. The arms of the law enforcement officers would be tethered and restrained from fulfilling their obligation to expose the efforts to pervert the course of justice if they were not permitted to produce such testimony at this hearing. To withhold such conversations between Alexander and Bannon and others involved would be to deprive the public of most of the true facts and leave the administration of justice in such area in a cloud of suspicion. I think great harm would be occasioned should I exercise my discretion against allowing such evidence to be heard. It is so much more important that it be heard and understood than that he who is largely responsible should not be exposed merely because he

has not yet had his trials. I therefore directed that the tape recordings and the transcript thereof should be entered as an exhibit herein and received as evidence on the inquiry.

CASES OF VICTOR HACHEY AND JOSEPH ST. LOUIS

Evidence of different incidents concerning the conduct of Bannon while holding the office of magistrate were given. I shall deal with each set of occurrences separately. The first of these concerned Victor Anthony Hachey and Joseph Leo Roy St. Louis. Such two persons were arrested and taken into custody on January 11th and 12th respectively of this year charged as follows:

> "The informant says that he has reasonable and probable grounds to believe and does believe that Joseph Leo Roy St. Louis and Victor Joseph Anthony Hachey @ Netti @ Mancuso within the six months ending on or about the 13th day of January in the year 1968, at the Municipality of Metropolitan Toronto in the County of York, unlawfully did keep a Common Betting house situate and known as 1505 Dundas St West Apt. C rear.
>
> Contrary to the Criminal Code.
>
> And further that the said Joseph Leo Roy St. Louis within the six months ending on or about the 13th day of January in the year 1968, at the Municipality of Metropolitan Toronto in the County of York, unlawfully did Record or register bets.
>
> Contrary to the Criminal Code.
>
> And further that the said Victor Joseph Anthony Hachey @ Netti @ Mancuso within the six months ending on or about the 13th day of January in the year 1968, at the Municipality of Metropolitan Toronto in the County of York, unlawfully did being the tenant knowingly permit premises known as 1505 Dundas St West Apt C rear, to be used for the purpose of a common betting house.
>
> Contrary to the Criminal Code."

St. Louis was also charged as follows:

> "The informant says that he has reasonable and probable grounds to believe and does believe that Joseph Leo Roy St. Louis within the six months ending on or about the 11th day of January in the year 1968, at the Municipality of

Metropolitan Toronto in the County of York, unlawfully did keep a common betting house situate and known as 166 Carlton St. Apt. 909.

Contrary to the Criminal Code.

And further that the said Joseph Leo Roy St. Louis within the six months ending on or about the 11th day of January in the year 1968, at the Municipality of Metropolitan Toronto in the County of York, unlawfully did Record or register bets.

Contrary to the Criminal Code."

They were both allowed on bail to stand trial which was renewed from time to time. On March 25th Hachey pleaded guilty to the first charge in the joint information and the Crown elected not to proceed against him on counts number two and three. As to St. Louis, the Crown did not proceed against him on any of the charges described in such joint information. On the same day he pleaded guilty to the single charge against him of keeping a common betting house at 166 Carlton Street, Toronto. Both were represented by counsel and remanded for sentence to March 28th, when each were sentenced by Magistrate Bannon to thirty days in gaol and a fine of $5,000.00, and in default of payment, a further six months in gaol consecutive to the other term. The sentence imposed in each case was reasonable having regard to the circumstances and in accordance with precedents set by the Court of Appeal for Ontario. The impropriety that existed in connection with the matter lies in Bannon's indiscreet conversations over the telephone with Alexander concerning the disposition of the two cases. It is clear he allowed Alexander to speak to him and attempt to influence him as to the extent of the offence and the sentence that should be imposed while the case was about to be disposed of.

On the evening of March 25th Bagnato called Alexander and discussed the fact that Hachey and St. Louis had both pleaded guilty as above indicated and were remanded for sentence. They were very disappointed at the plea and were obviously more interested in Hachey. Bagnato expressed the opinion that St. Louis might be released entirely and that such a result would be unsatisfactory. Alexander said, "Well, we'll see that he don't." The latter also stated, ". . . but I can't

figure out why he convicted him with keeping, when I told him to make it a permitting." He also stated he would be speaking to him that night and that the remand was to Thursday because he was finished on Friday. It is obvious that Alexander was referring to Bannon because he refers to the person who convicted Hachey and such Magistrate was sitting in that court only until Friday of that week. The purpose of the remand to Thursday was that he would deal with sentence before the end of the week. Alexander also did speak to Bannon that evening. That telephone call was from Bannon to Alexander. In general evasive language, they discussed what is obviously the Hachey and St. Louis cases and the guilty plea entered that morning. Early in the conversation, without further introduction, Bannon stated, "Ah, listen, that was a little rougher." This indicates to me that there had been an earlier conversation between the parties in which the extent of the offence had been discussed. Bannon stated that he was "in a spot now" because of the extent of the gambling recorded on the sheets, indicating it was about $44,000.00. He also asked Alexander to come to his home that night at 11.30. After that call, Alexander called Bagnato telling him that Bannon had just telephoned him. Before the conversation with Bagnato commenced, Alexander is heard to say, apparently to someone else in the room, "I'm not going to get involved in it, this guy may want money, you see. He wants me to drop up late tonight —11.30." Later in the same conversation Alexander stated, "This guy is probably looking for money now when he is talking like this. Want's me to come up late tonight or is there any sense in me even going to him. I don't know what to say to him." The above statement convinces me that up until this time there had been no monetary consideration passing to the Magistrate from Alexander or any of his friends, nor had there been any discussion thereof. I am convinced of this because of the manner in which Alexander here refers to the matter. Later in the same evening Alexander called Bannon back and asked for an explanation why the charges were that of keeping, and stated the fines would have to be the same for each. He also asked the Magistrate how small he could make Hachey's sentence, and Bannon replied he was waiting for a decision in a similar case being heard in the Court of Appeal

before making his decision. Alexander also asked him to speak to some other party about his own case. It is not clear who he is referring to, but most probably it is Magistrate Rennicks, who was then seised of a charge against Alexander of breaking and entering. In the closing part of that conversation, Alexander said to Bannon, "Alright, meantime I've got something in mind for you", to which Bannon replied, "Okay." This is the first incidence in conversations directly with Bannon that I find any suggestion of reward to him. One cannot draw any clear inference as to the true meaning but read in the surrounding circumstances the above statement leaves the impression that he intended to indicate to the Magistrate a gift or reward of some kind was being considered.

Although on a hearing of this kind I may allow hearsay evidence to be given, I hesitate to allow conversations between Alexander and Bagnato to influence my decision in matters that affect Bannon except to the extent that I find therein statements which enure to his benefit. There are many reasons why Alexander in particular may have made statements to impress others as to his influence with the magistrates or Bannon in particular. I prefer to look for proof of the true relationship between such parties in conversations in which the latter participated and in statements made to him which he has obviously accepted or permitted to be made without objection and has thereby impliedly approved. His action in relation to these parties is also an area which affords abundant and cogent proof of the true situation.

ALEXANDER'S TRIAL BEFORE MAGISTRATE RENNICKS

The second incident has reference to a charge against Alexander that he did on January 1st, 1968, unlawfully break and enter a dwelling house at 324 Weston Road with intent to commit an indictable offence therein. He elected trial before Magistrate Rennicks and the evidence was heard on February 14th and argument on February 28th, when judgment was reserved until March 27th, when the charge was dismissed.

On March 25th Alexander called Magistrate Gardhouse with the intention of ascertaining if he knew what might be

the outcome of the trial. I shall deal with that conversation in that part of the report which deals with Magistrate Gardhouse. Immediately thereafter Alexander called Bannon and the conversation indicates that he had hoped Magistrate Gardhouse might have spoken to Magistrate Rennicks about his case but that he had not done so. Alexander then suggested that Bannon should speak to someone about the case. It is not clear which of the two Magistrates he had reference to, but Bannon agreed to do so. It is clear from the evidence of Magistrate Rennicks that neither of such Magistrates spoke to him about this case or tried to influence him in regard to it. The Crown Attorney concerned verified that no one ever spoke to him about it. The Crown evidence was such as to leave a real doubt as to the identity of the accused and the decision was the only one justified on the testimony. The impropriety involved in the incident as regards Bannon is that he should allow an accused to request him to speak to the presiding magistrate concerning his case or let the accused think that he had done or would do so.

ALEXANDER'S CHARGE OF BREAKING AND ENTERING THE BUSY BEE STORE

The third incident is that where Alexander was charged with three counts in respect of breaking and entering at the Busy Bee Discount Food Store. The form of the charge against him was as follows:

> "The informant says that he has reasonable and probable grounds to believe and does believe that Vincent Charles Alexander sometime during the month of August in the year 1967, at the Municipality of Metropolitan Toronto in the County of York, unlawfully did break and enter a certain place, to wit, the Busy Bee Discount Food Store, situated at 1105 Wilson Avenue, and steal therein a safe containing a quantity of money and cheques, the property of Busy Bee Discount Foods Limited.
>
> Contrary to the Criminal Code.
>
> And further that the said Vincent Charles Alexander sometime during the month of August in the year 1967, at the

Municipality of Metropolitan Toronto in the County of York unlawfully did break out of a place, to wit: the Busy Bee Discount Food store, situated at 1105 Wilson Avenue, after committing an indictable offence therein, to wit: Theft.

Contrary to the Criminal Code.

And further that the said Vincent Charles Alexander sometime during the month of August in the year 1967, in the township of Vaughan in the county of York, unlawfully did have in his possession one safe and a quantity of money and cheques, of a value exceeding $50.00, the property of the Busy Bee Discount Foods Limited, theretofore stolen, he knowing the same to have been so stolen.

Contrary to the Criminal Code."

Stoutley, for whom Bannon had acted, and one Cook, were also charged separately with such offence. Their trials were disposed of earlier by pleas of guilty. It should be noted that the information was only laid against Alexander on the 20th of December, which was at a much later date than the other two had been charged. This indicates that although no charge in respect of the matter was against Alexander prior to this date, he had attended at Bannon's office with Stoutley in regard to the latter's defence some twelve or fourteen times. Alexander was first brought before the court on December 20th. On February 21st he was committed for trial by judge and jury on all three counts and granted bail on Ten thousand dollars property security on his home at 7 Welbrooke Place, Toronto. He had a solicitor acting for him. He was anxious that the trial should not be held before September of 1968. His own solicitor thought the case might come on before then. Instead of quite properly having his own counsel speak with the Crown Attorney and arrange an adjournment to a suitable date for trial, he asked Bannon to check on it. He appears to be one possessed of the attitude that prefers to have such a matter accomplished by some devious means although the same result could be readily obtained in a straightforward manner. On April 6th Bannon spoke with Alexander on the telephone. Apparently this was a return call, as Alexander said, "You know what I wanted Fred?" On Bannon indicating he did not know, his memory seems to be refreshed and he

then told Alexander he had talked with James Crossland, one of the Crown Attorneys, and found there should not be any difficulty in having the trial put over until September, and he thought he could keep it off the list. Alexander then said, "We'll send him a case then eh?", to which Bannon said, "Well, just leave it to me." Bannon suggested Alexander should not tell his lawyer of his part in these arrangements. In the conversation Bannon invited Alexander to call him again at the beginning of the week and suggested that Alexander might come up one night the following week. On April 16th Bannon and Alexander arranged to meet at the Lucky Garden Restaurant at 12.30 noon on the following day. On May 7th in a telephone conversation concerning such adjournment, Bannon reports to Alexander that his case is definitely put over until September. During the course of this conversation Bannon stated as follows: "No problem, and he's going to try and be the ah one on it too." In a later telephone call the same night, Bannon asked Alexander to come up to his home that night even though it might be very late when he was able to do so. When asked what he had in mind, Bannon said, "Well, it's just that there was one or two things I wanted to talk to you about."

I am convinced that this case was not reached before Long Vacation this year because of the number of cases on the list for trial before it, and that Bannon had not arranged with anyone that it should be put over. What he probably did was to find out the number of cases ahead of this one with which we are concerned at the moment, and on the strength of that made the assurances he did to Alexander. I am convinced there was no donation of the case by him as suggested in the conversation. Bannon's error herein lay in not advising Alexander immediately that members of the Crown Attorney's staff would not accept gifts when adjournments were agreed to. To report to Alexander as he did left a very improper impression of Crown officials responsible for the administration of justice in the Toronto area. The fact that Alexander was one who would not be concerned about such impropriety but rather relish its existence for the opportunities it might afford him, does not detract from the injustice thereof.

DIANE BAKER CASE

Diane Marie Baker was charged in Toronto Police Court that on or about the 12th day of October in the year 1967 at the Municipality of Metropolitan Toronto, in the County of York, she unlawfully did have in her possession a narcotic, to wit: Cannabis, (Marijuana), contrary to s. 3 (1) of the Narcotic Control Act. She elected trial by a judge without a jury. Her preliminary hearing was held on January 2nd, 1968, and on January 24th she was formally committed for trial but released from custody on furnishing cash bail of Four hundred dollars. She had a lawyer acting for her whom she had retained herself. On Monday evening, April 15th, she came to Toronto by aeroplane and stayed at the Westbury Hotel. On Tuesday she was contacted by Alexander who discussed with her and her friend, one Edward Rutman, arrangements as to the outcome of the charge against her.

The next day, April 16th, at 6.27 p.m. the tape evidence indicates Alexander called Bannon at the latter's home. Early in the conversation it is apparent that Alexander had previously talked to the Magistrate about the Baker case because, without mentioning a name, he enquired, "Yeah, did you find that out?", and Bannon replied by explaining that he could not yet find out who was sitting. Bannon asked about her record and Alexander explained that the police had found cigarettes containing marijuana on the dresser in her motel room. The recorded dialogue is then as follows. The letter "F." preceding an answer or inquiry indicates it was the voice of Fred Bannon; the letter "V." indicates that of Alexander.

"F. What'd she have two?

V. Two charges, oh yeah, this time and she doesn't even apparently they were in a motel room and they, there was some kind of a problem that they had and then the Police came back to the motel room and this is it, they were sitting there on top of the dresser and that's all there was.

F. And whose, whose, whose name was the motel room in?

V. Hers.

F. And was there anyone else there with her?

V. No, but there had been somebody staying there, but they're not there, they weren't they won't come up and say that they were.

F. Yeah, yeah.

V. They were going to, and then they changed their mind.

F. They had them there, did they?

V. Yeah.

F. Did she, did she have the reefers?

V. Yeah, well they were there, they were on the

F. Did, well would she make any statement about them?

V. No. She said that they weren't hers, that's all.

F. Well she should be able to have a good shot at beating that.

V. Well that's what I thought.

F. She had, ah, if she had ah Judge ahh Rogers she'd be alright.

V. Yeah.

F. How, how much has she paid Wally?

V. She give him $300.00.

F. She did eh?

V. Yeah, but he wanted more than that I think.

F. Yeah, how much more did he want?

V. I don't know, he wants a fair shot.

F. He does eh?

V. Yeah.

F. Yeah, well she can certainly do better than Wally.

V. Yah, well that's what I said.

F. Yeah, ah.

V. But she's just staying over tonight waiting for to get word from me, you see.

F. Yeah, she, she what?

V. She's waiting to hear from me.

F. Yah.

V. And what, what I want to advise her to do.

F. Yeah, ah, what I'd like to do, and the guy that I would like to see handle it, because he's well liked

V. ah huh

F. and pretty straight

V. Out of your place?

F. No.

V. Oh.

F. No, would be ah Nick McRae.

V. McRae.

F. Yeah.

V. Uh huh

F. But you know, don't tell her until I've talked to him."

There then follows conversation about another case and the conversation in connection with the Baker matter concludes as follows:

"V. What'll I do, tell her to stay over another day?

F. Yah, just tell her, to sta . . she's, she's going to go back to Montreal is she?

V. Yah

F. That's where she's from?

V. Huh huh

F. Yah, well has she got anything pressing down there?

V. No, no, nothing.

F. Oh, yeah, well tell her to stay over till tomorrow night anyway.

V. Alright, then we'll

F. You'll have some news for her?

V. We will?

F. Yeah.

V. Okay?

F. Okay?

V. Yep.

F. Alrightie, bye bye now Vince."

On Thursday, April 18th, Alexander saw Miss Baker again and suggested that he should make arrangements whereby she would plead guilty to the charge and receive suspended sentence. For manipulating such result he wanted

her to pay him Five hundred dollars forthwith, a further Five hundred dollars before court and One thousand dollars on receipt of such sentence. She said she would not plead guilty to a charge she was not guilty of. He then said she could get a postponement until September and in the meantime better arrangements might be made but the cost might be higher. The cost of such adjournment was to be Five hundred dollars. The parties agreed upon this latter suggestion. Alexander did not want to take a cheque but Rutman's money was in a Montreal bank. Alexander finally accepted Rutman's cheque for Five hundred dollars dated April 18th, 1968, which was presented to a Toronto bank forthwith for collection and cash. Alexander then drove her and Rutman to the train that she was taking to Montreal. It was arranged she was to return to Toronto on April 23rd and Alexander would introduce her to another lawyer who would postpone the case to September.

Immediately after Alexander's talk with Bannon on the evening of April 16th, at 7.19 p.m. he called Rutman at the Westbury Hotel and after salutations the conversation is recorded as follows:

"E. How are you Vince?

V. Not bad. I was just speaking to someone and I've got an appointment with him tomorrow at 12.30

E. Tomorrow at 12.30

V. Yah, now here's the thing, the, though, ah, how will I put it to you, the party that's there right now

E. Yah, uh uh

V. uh, it's no good right now, but there'll be a different one in a few days.

E. There'll be one in a few days?

V. Like another one.

E. uh uh

V. there,

E. Okay.

V. But he won't be sure but we may, we'll know something tomorrow, because for her to switch over from her, her lawyer, you know.

E. Right

V. to this other one

E. Right

V. Now, that he wants her to get, recommends and ah, you'll have something definite for tomorrow after 12.30. I'll be with him for an hour or so, now if you're going to be down there, I can come down and see you ah in the afternoon or are you going out?"

The balance of this talk relates to arrangements for a meeting between the two of them the following day.

By this time the police authorities were suspicious of the relationship between Bannon and Alexander by reason of the various matters they had heard discussed between them in such telephone conversations. As part of the investigation into Alexander's activities, Policewoman Joan Barron of the Intelligence Bureau of Toronto Metropolitan Police Force was stationed at the Lucky Garden Restaurant, 5347 Dundas Street West, at 12.15 p.m. on Wednesday, April 17th, to make observations. She described what took place in part as follows:

"At 12.35 p.m. Vince Alexander entered the restaurant. He looked around, and sat at a table near the front. He got up and went to the washroom, and returned to the dining room. He then left the restaurant and was observed getting into a black vehicle that was parked directly in front of the restaurant. At 12.45 p.m. after only about 5 minutes, Vince Alexander returned and sat at the same table. The proprietor served Alexander, who ordered only coffee. The proprietor did not appear to know Alexander.

At this time Alexander was wearing a dark brown suit, white shirt and tie. He had black socks and shoes. He remained at this table alone, until Magistrate Fred Bannon arrived at the restaurant at 1.05 p.m.

Magistrate Bannon was wearing the white shirt and collar, with the cross ties that Barristers and Judicial persons wear. He had on dark trousers.

When the Magistrate first entered, he saw Alexander seated at the table, went over to him immediately and shook his hand. He said, 'Hi Vince, long time no see.' The proprietor and another person from the restaurant came to greet the Magistrate. At this point the Magistrate introduced the proprietor as Art, and the other person to Vince. He glanced

around the restaurant and then sat down at the table with Alexander. (There were 3 men and the P.W. in the room.) The Magistrate got up and said he would be back shortly and he left the restaurant. This was at 1.15. He returned at 1.18 p.m. with a pair of dark sun glasses on.

When he returned Alexander rose from the table, and the Magistrate said to the proprietor that they had a little business to discuss first. He then directed Alexander to sit at a table near the back, which was approximately 8-10 feet from the table at which P. W. Barron was seated.

The two men, Alexander and Bannon, then entered into a whispered conversation, which the P.W. could not overhear . . .

. . . .

Parts of the conversation were in a lower voice, and only portions could be heard.

. . . .

During one of the periods of time that the proprietor was not at the table, Bannon asked Alexander if, 'the lady in question had a place to stay', and Alexander didn't know what he meant. Bannon repeated himself, he asked, 'apartment, or house?' Alexander's reply was not heard. Bannon then said that 'he was going to have to come up with a bundle to look after it, but not to worry'. Bannon asked if she was married and if she had kids. He said that this was one angle.

Bannon then changed the conversation, the proprietor had returned, and they talked about horse racing. Bannon said that he usually bet $50.00 on the first race, and if it won, he shot the works and he let it ride for the rest. There was some talk about an extortion case, the names were not clear. They spoke about other Magistrates, Alexander said he had been speaking to George. Art, the proprietor asked about Bigelow and Bannon said he was unpredictable, unpredictable.

They spoke of a person named Milt, who doesn't look well, and Bannon thinks he has diabetes. Alexander asked what Bannon thought of Jimmy Crossland, and Bannon replied that he was alright.

Bannon then asked Alexander to call him tonight at his home, about the other matter, and Alexander suggested 6 o'clock. Bannon said no, this was when they had supper, 5 would be better. Then he suggested that he call Alexander, and Alexander said he wasn't going to go home this afternoon, that he would call at 5.

Bannon said something in a lower voice, but was heard to say, 'I almost died when they pleaded guilty'. 'Have you spoken to their wives lately, what did they think of the sentence'. Alexander replied that they thought it was fair. Bannon said, 'They could have gotten off, particularly him, the morality had the place, but he was out of it, and they picked him up the next day.'

The proprietor came to the table with some papers, that Bannon looked at, and they made motions to leave. All three went out together, Bannon in the middle with his arm around the waist of both the proprietor and Alexander. It was 2.10 p.m."

That evening at 6 p.m. Alexander called Bannon. The former enquired if the latter had heard anything, to which his reply was, "Nope, nope, nope, do what I said.", and the balance of such conversation is as follows:

"V. Ah Monday eh?

F. Yeah, yeah.

V. Just like that.

F. Just like that.

V. Alright.

F. Okay.

V. I guess that's the best.

F. That's the best you can do.

V. uh huh

F. but ah he was gone by the time I got, I got there.

V. Yeah, well I figured it was a little late then anyway, you know.

F. Yeah.

V. Well that's what I told, I told her to go away tonight

F. Yah

V. and come back Monday.

F. Good.

V. And in the event that ah, a postponement, maybe we can take something and

F. yeah

V. get it put over until September.

F. yep, yep.

V. If necessary.

F. okay.

V. Alright.

F. Perfect.

V. and I'll talk to you when, Monday?

F. Yep.

V. Alright and you'll have arrangements made for her to go and see that other party?

F. Yes, I will.

V. Okay

F. Okay

V. bye.

F. Alrightie, bye, bye."

It was subsequent to the above conversation that Alexander saw Miss Baker and entered into the financial arrangements hereinbefore referred to.

On Friday, April 19th, at 5.49 p.m. Alexander called Bannon's residence, but the latter was not in. He left a message with Mrs. Bannon that he would call later. He called back on Saturday at 10.35 a.m. The relevant part of that discussion is as follows:

"V. You didn't hear nothing eh Fred?

F. No, not a word.

V. I was wondering wh--, we can do, that party will be in a

F. Monday?

V. Tuesday.

F. Is it Tuesday?

V. Tues—well it's coming in Tuesday morning.

F. Yeah, well I'll know by then.

V. Ah for at least, if we can send somebody in to act.

F. Yeah

V. And postpone it.

F. Yeah. Alright.

V. Do you think this can be done?

F. I think so.

V. I've al-- I've already taken something.

F. Have you?

V. Just for that, nothing serious.

F. Yeah

V. But that's good enough eh?

F. Yeah, yeah, sure, sure, well, that, that, that'll at least they can do that.

V. Ah so you're going to have to line up somebody.

F. Yep

V. and have them go in ah Thursday.

F. No problem.

V. That will be alright eh?

F. Yep, no problem.

V. Do you think they'll get the postponement?

F. Yeah, I don't see why not. I don't see why not.

V. Ah, it comes up on the 25th.

F. Yeah.

V. But the party will be in Tuesday.

F. Good, good.

V. So

F. Well, I'll, I'll ahh talk to you on Monday.

V. Do you want me to call ahh, would would, you be going on Monday or what?

F. Ah, you mean Monday night?

V. Yeah.

F. No, I should be here.

V. You'll be there?

F. Yeah.

V. At supper time I guess?

F. Yeah.

V. Alright then.

F. Okay.

V. Yeah, I'll phone you Monday night and you'll make arrangements for somebody to go, for me to take her down to see somebody.

F. Will do.

V. On the Tuesday, okay?

F. Yep.

V. She won't have to give anything to him will she?

F. I doubt it very much, no.

V. I mean ah

F. No, No, I'll look after it.

V. Alright.

F. Okay.

V. Yeah.

F. Alright Vince, bye."

On Tuesday, April 23rd, Rutman called Alexander by long distance telephone from New Orleans, U.S.A. At that time the latter stated Miss Baker had called from a hospital in Montreal stating she was too sick to appear in Toronto on the 25th. Alexander had later contacted the nurse in the hospital to obtain a doctor's certificate as to her condition to be present in court when her case was called. It was apparent that Alexander wanted a different solicitor to act for Miss Baker. He did not want to contact Walton Rose who had been acting to cancel his retainer. He said such solicitor did not fit into the picture and another was to be retained. The following part of such discourse pertains to contacting such solicitor: the letter "E." before a line indicates it is the voice of Rutman.

"E. Right. Now would you do me something you want Walton Rose's number and just tell him to cancel it.

V. And who will I say I am, who will I say I am.

E. Pardon?

V. I didn't want to tell him that I had anything to do with it.

E. Well I tell you what we'll do.

V. What?

E. Is, I'll talk to Dianne tomorrow and I'll get back to you tomorrow night.

V. Alright and your

E. Or I'll, I'll get in contact with Dianne, I'll talk to her and maybe I'll call Walton Rose myself.

V. I think it'd be better.

E. Yeah, okay.

V. because these other people don't like to step on anybody's toes, you know and cause them any

E. Right

V. dissension there at all, because they don't know where they stand, really, with this thing as far as money is concerned. I just said well leave it go this way for what's there.

E. Right.

V. For the time being and then we'll, we'll settle something else later on."

The letter came to Alexander from a doctor in Montreal certifying that the accused was in hospital there under his care but it referred to Dianne Kappas rather than Diane Baker. This resulted because she had been married after the charge had been laid. This caused some problem to Alexander but he arranged for another certificate to be sent referring to her in the same name as that in which she stood charged. On Thursday, April 25th, Rutman called Alexander again from New Orleans. Part of the conversation pertaining to such problem is as follows:

"E. I see, well, I don't think there should be too much of a problem there, as long as they know her married name.

V. I haven't had a chance to talk to anybody yet, today, I didn't find out anything today, but I was just trying to get a hold of the party in fact a few minutes ago, and he wasn't home yet, just to see what happened, you know.

E. I see, who's the lawyer that's going to be handling it Vince?

V. Well I'm not sure what lawyer he sent down yet. The guy I got, you know, my man, I don't know who he sent in. I'm not sure, but ah, that's what I was waiting to find out really. He just told me that there would be somebody there this morning and that he wanted that bloody letter, you see, so

he said it didn't matter if I got, but he had the letter for this morning, as long as I had it for within a couple of days later, you know. So that he can turn it into the Crown's office."

The same evening at 11.15 p.m. Bannon called Alexander. That part of the discussion in relation to this case was as follows:

"V. Hello,

F. Hi Vince,

V. Yes Fred.

F. How are you tonight?

V. Not too bad.

F. That's the boy.

V. Did anybody go in for her this morning?

F. Ah, yeah. As a matter of fact yesterday we got in touch with the Crown and ah they said that it wasn't set for trial.

V. It wasn't?

F. No trial date has been set yet and there's a chap by the name of Karfilis

V. Who?

F. Karfilis was, was her lawyer.

V. Oh the one that went in for her you mean?

F. No. He, he was on the record for her.

V. Oh, well then Rose must a said that's right too, Rose sent him.

F. Yeah, so I don't know what happened today.

V. But ah he had phoned Rose, he just phoned me now from New Orleans.

F. Yeah.

V. And he had told Rose not to appear.

F. Yeah.

V. But he said it was supposed to go on this morning, but I received a letter from the hospital

F. Yeah.

V. Just hand written, I guess it was from some doctor.

F. Oh it is eh?

V. And uh but it's got her married name on it Dianne Kappas or Kapus, Kappas I guess.

F. Oh yeah, yeah

V. uh, but this will be no good will it?

F. Well I'm not sure.

V. She's charged under Dianne Baker.

F. Yeah, she doesn't want to be charged under the other one either.

V. What? Under the married name?

F. No.

V. No, no, no.

F. No, well anyway, we'll have to

V. But I spoke to him and he's going to have her send me another one right away.

F. Oh that's fine.

V. But if you want this letter

F. Yeah, well

V. But you had somebody go in eh?

F. Well I, there, there was nothing (both talking)

V. I see, I see

F. But I will have them check with the Crown and see what the situation is and tell them not to set it on for a while, because she doesn't know how long she's going to be in there, so that's what happens.

V. Well it's just put off indefinite then is it?

F. Yeah, yep.

V. Well there'll be no problem there then.

F. No."

There follows talk about the land deal and then they return to the Baker case in the following dialogue:

"V. Alright, I just wanted to find out about that and about what to do with this letter I had.

F. Yah.

V. And uh, I guess I just won't do anything with it until I get another one from her.

F. Right.

V. So he's going to contact her and have her send another one through to me.

F. Good.

V. But it wasn't scheduled to go on this morning?

F. No, not according to the Crown Attorney, So

V. When will he know the next date?
How will we know?

F. Well they'll notify her soon as we put this lawyer on the record, then they'll notify him.

V. Oh the lawyer that's going to act for her now.

F. Yah.

V. Okay.

F. Okay.

V. I'll speak to you later.

F. Alrightie.

V. Bye bye.

F. Bye now."

Alexander called Bannon on Sunday, April 28th, at 10.40 a.m. The former stated the certificate with name changed to Baker should be received by him on Monday. Part of the conversation is as follows:

"F. So did she know this Karfilis?

V. I wasn't even talking to her. I imagine Rose sent him in.

F. Yah.

V. That's who it was.

F. I would think so.

V. Yah, because she had said this before, that she retained Rose, but he sent somebody else to act for her.

F. Oh yah.

V. So this is what it might ah, must—

F. Well that's what I heard happened on it.

V. And he was contacted, Rose was

F. Yah?

V. From ah this girl's boyfriend in Los Angeles

F. Yah

V. And told to drop it.

F. Oh fine.

V. So that's all there was to it.

F. Alright. Now when you get the letter will you let me know Monday?

V. Yes, I will, I, I guess you won't be dropping in today, eh?

F. No.

V. Your going somewhere?

F. I tell you, we're going to ah, I'd like very much to."

After discussions about other matters, the dissertation turns again to this case, as follows:

"V. I haven't seen him lately and that's about it. So, so, we don't know when this thing is coming up then do we?

F. No, I don't. I don't at the moment.

V. I'll just tell her it's put off for a while more than likely it won't come up till fall anyway.

F. I doubt it, no, I doubt it very much.

V. By the looks of it, there's no way of telling who's sitting in, in that other fellow is put off till ah June.

. . . .

F. Yah, so anyway I'll talk to you tomorrow when you get that letter. It'll have to go over to Nick McRae.

V. Alright.

F. Okay.

V. Yah

F. Alright.

V. Right.

F. Take care Vince.

V. Bye.

F. Bye, bye."

On Thursday, May 2nd, Alexander called Miss Baker in Montreal and told her that her case was put off indefinitely and that he would know when it would come up again and would then call her. When Miss Baker had not appeared and no solicitor was present when her case was called, a bench warrant was issued for her appearance. She was later arrested in Edmonton and brought back to Toronto. She was in custody of a police officer when she appeared at this inquiry to give her testimony but bail was available to her then. She has since been released on bail pending her trial. She has returned to the lawyer she retained in the first instance. Nicholson D. McRae gave evidence at the inquiry to the effect that no one had ever contacted him about acting for Miss Baker. He had never seen Alexander before this hearing, and would not have taken instructions from him to act for a third party. After hearing the tapes it became apparent to Mr. McRae that Alexander had called him on one occasion about the Baker case but he said he had no knowledge of the case and told him so. Neither of the Magistrates had ever asked him to act for an accused. I have no hesitation in accepting his testimony and am convinced that he knew nothing of, and took no part whatever, in cases in which either Alexander or Bannon were interested. In my opinion his name has been used frequently by Bannon and Alexander in these matters in an attempt only to lend what respectability they could to some of their actions.

In interpreting Bannon's participation in the Baker case, one should remember that she had already elected trial by a higher court in which neither he nor any other magistrate had jurisdiction. He was therefore without ability to influence in any way the judge to preside at the trial. It was imprudent and wrong for him, however, to undertake to engage a lawyer, advise about adjournments, or give an opinion as to what judge might be preferable. His participation therein goes far beyond helping a friend. It rather amounts in some instances to assuming a major role in planning the defence of this accused. I make this observation because of his undertaking to engage a lawyer and because of the instructions he gave to Alexander in the matter from time to time. His participation in this case with Alexander

in the light of all the circumstances, and his knowledge of the latter's interest in this case, leaves a cloud of suspicion that he expected to receive from Alexander some form of remuneration for his assistance.

MORTGAGE LOAN ON ALEXANDER'S HOME

Miss Dorothy Mildred Gardhouse Garbutt, is a switchboard typist who has worked for The T. Eaton Company in Toronto for some forty years. She had been a client of Magistrate Gardhouse before his appointment. He had acted for her in the investment of such money as she had to loan on small mortgages. When Bannon took over such practice she continued with him. When he was appointed a magistrate, she went down to see him about the end of February to take her files away but he assured her that he would be able to look after her work with the exception of court work. The Magistrates Act, R.S.O. 1960, c. 226, s. 10, is as follows:

> "10. (1) A magistrate shall not act as agent, solicitor or counsel in any proceeding before a magistrate or a justice of the peace, and no partner or clerk of a magistrate shall act as agent, solicitor or counsel in any proceeding before him.
>
> (2) Unless authorized by the Lieutenant Governor in Council, a magistrate shall not practice any profession or actively engage in any business, trade or occupation but shall devote his whole time to the performance of his duties as magistrate."

Bannon was not authorized by the Lieutenant Governor to continue to practice his profession.

About the 7th of May, Bannon called Miss Garbutt over to his office in the City Hall to sign papers in connection with the renewal of one of her mortgages. She then told him she had some money to invest in a mortgage. He knew that at all times she expected and only loaned her money on the security of first mortgages. He first spoke of another client who wished to borrow but the amount required was such as exceeded what Miss Garbutt had available. He then told her a loan was required by Alexander in the amount of Ten thousand dollars on the security of his home at 7 Welbrooke Place, Toronto. She went out to see the premises and thought the house was worth between Thirty-five thousand and Thirty-seven thousand dollars, and accordingly phoned Bannon that she would

take the mortgage and gave him the cheques on four different banks totalling Ten thousand dollars all payable to him. Bannon knew that Miss Garbutt was advancing money in the faith that she was getting a first mortgage on the property and that she would not have advanced the same if she had thought there was any doubt about that. He says he looked at the title and knew that the premises were in the name of Alexander's wife, Jacqueline Ann Alexander, and was already subject to a first mortgage to the Mutual Life Assurance Company of Canada for the sum of Twenty thousand five hundred dollars dated October, 1964, repayable at the rate of One hundred and forty dollars and forty-four cents monthly to include principal and interest, with the balance due in 1990, and a second mortgage to one, Morris Zamkoff, for Seventeen hundred and fifty dollars, due in December, 1967. He withheld from Miss Garbutt any information as to the business or character of Alexander, or that he was then facing criminal charges and at liberty on bail of Ten thousand dollars with such property posted as security therefor. Bannon advanced Five thousand dollars of such mortgage funds to Alexander but says he arranged with the latter that the other Five thousand dollars might be retained by him for personal use as a loan from Alexander until July 2nd, when he was closing a sale of property owned by him at 212 Yonge Street. When he was in funds from such sale he intended to advance that sum to Mrs. Alexander. He, however, said that he later intended to pay off the second mortgage from these funds. Even if that were done, it would still have left Miss Garbutt's mortgage second to that of the Mutual Life. At the hearing herein I was assured by Mr. Maloney on behalf of his client that the full amount of Miss Garbutt's advance would be returned to her forthwith. Since then a solicitor acting for her advises that Bannon has repaid to her the sum of Ten thousand seven hundred and twenty-five dollars, being the amount of the mortgage monies advanced by her, together with interest for six months, and a further sum of Three hundred dollars representing the amount of discount that she was charged in the sale of securities in order to raise the cash to the amount of Ten thousand dollars for the Alexander

mortgage. Bannon also delivered up all documents and papers relating to pending matters of Miss Garbutt, all of which appeared to be in good standing.

JOINT LAND PURCHASE OF BANNON AND ALEXANDER

James Squigna was a very close friend of Alexander having known him since they were seven or eight years of age. He was best man at the former's wedding. He is a real estate broker. On April 23rd of this year Squigna, as agent for the vendor, secured an agreement whereby one Joseph Cunningham in trust for a limited company to be incorporated agreed to purchase from George W. Ramm and his wife a fifty acre property in the Township of Oakville. The total purchase price was Seventy-five thousand dollars, to be secured by a deposit of Two thousand dollars cash, Twenty-eight thousand dollars on closing subject to adjustments on July 30th, 1968, and the giving back of a mortgage for the balance. Cunningham was actually purchasing as a trustee for his father-in-law one Cleason Martin and Frederick J. Bannon. Each of such purchasers were to advance One thousand dollars towards the deposit. Bannon advanced One thousand dollars but agreed with Alexander to share the venture with him. Alexander, however, did not advance any portion of the deposit. On May 30th the property was resold at the price of Eighty-five thousand dollars. Both deals were to be closed on July 28th. Out of the profit on the resale, commissions were to be paid to Squigna. On June 3rd Martin purchased from Bannon his interest in both such agreements for the sum of Two thousand dollars and agreed to return to him the share of the deposit he had paid earlier. This profit of Two thousand dollars to Bannon was then divided equally with Alexander, so that Martin paid to Bannon a total of Two thousand dollars and on Bannon's instructions One thousand dollars went to Mrs. Alexander. Alexander therefore made a profit of One thousand dollars without having put up any money. The transaction seems to show the close relationship that existed in a business way between Alexander and Bannon even at this late date, when Bannon undoubtedly knew the continued felonious character of his friend.

ALEXANDER'S BAIL APPLICATION

Alexander was further charged on May 15th; that on or about the 14th day of May, 1968, he did unlawfully break and enter an apartment at 1979A Yonge Street with intent to commit an indictable offence therein, contrary to the Criminal Code. A warrant was issued for his arrest. At 1.27 a.m. his wife called him at 769-5669. He then told her he was not coming home and if enquiries were made as to his whereabouts she should say he went to Hamilton to see some friends. He gave her Bannon's telephone number with instructions to call him if he was arrested. At 4 a.m. of the same day she called her husband back to say the police had been there with the warrant for his arrest and that his two partners had been caught. He said he was going to call Bannon at 8 o'clock in the morning to get instructions from him. By this he obviously meant arranging bail. She apparently forgot the telephone number because at 7 p.m. that night she called Norman Manett to get Bannon's telephone number from him. Immediately thereafter at 7.09 that evening she called Bannon to tell him her husband had been arrested. He replied, "Okay, I wonder how that happened?" He went on to say, "Well it's all set for tomorrow anyway.", and again expressed surprise at, "How they went there?". Terry Mackie phoned Jacqueline Alexander at 8.10 p.m. that evening. From that conversation it is obvious Mrs. Alexander was of the opinion that Bannon had picked out the lawyer that should act for Alexander. On Thursday morning at 8.10 a.m. Bannon called Mrs. Alexander and asked her to come into his office before going to court that morning. An Intelligence Officer saw her go into his office at 9.45 a.m. The matter came before Magistrate Wilch that morning in the form of an application for bail. The Crown Attorney opposed bail being granted, but the Magistrate allowed it in the sum of Ten thousand dollars property bail. In a discussion with another person that day, Mrs. Alexander said bail was supposed to be Five thousand dollars but it was increased to Ten thousand dollars.

Lucien Arthur Beaulieu is an assistant Crown Attorney in the County of York. He was to appear on behalf of the Crown when Alexander applied for bail on May 16th. In the

late afternoon of May 15th Bannon met him and told him of Alexander's application for bail in the morning, and suggested Five thousand dollars or Ten thousand dollars would be a suitable amount at which to set bail. The next morning before court Bannon called such Crown Attorney and reminded him of the application for bail, stating the same was to be heard in Police Court that morning. The Crown Attorney, however, opposed bail because the accused was already awaiting trial on other charges and had a previous record. Counsel who appeared on such application for Alexander had been telephoned to do so by Bannon. Bannon admits that the same morning before court he approached Magistrate Wilch and told him that Alexander had been an old friend of Magistrate Gardhouse and of himself, and asked him if he could see fit to grant bail. Magistrate Wilch replied he would have to hear the facts of the matter and deal with it in court. Such Magistrate dealt with the application in the same manner as all other applications of such a nature, and applied the proper relevant principles and considerations in granting bail. I am convinced he was in no way influenced by the request of Bannon. Alexander had never been a client of either Magistrate Gardhouse or Bannon. This false statement could have been made by Bannon only to hide his true association with Alexander and to hide his interest in the application for bail.

GUIDE OF ETHICS OF MAGISTRATES

The Magistrate's Court in our criminal jurisprudence system hears and disposes of the great proportion of all trials of a criminal or quasi-criminal nature and misdemeanours. Judging in such a court often becomes arduous and frustrating. It is the channel through which the most serious crimes reach higher courts for trial, as the magistrate in the first instance must decide, after hearing testimony, if there are sufficient incriminating circumstances that demand the accused should stand trial on the offence with which he is charged. It is in such court that counsel for the accused has opportunity by cross-examination of testing the strength of the Crown's case against his client. It is the training school

in which young police officers serve their apprenticeship and are guided in the proper manner in which to perform their duties and present their findings in a court of law. It is the forum in which the youthful barrister seeks justice for his first client and where in a practical way gains his first impressions of our courts of justice. It is the birthplace of his legal career and where the shape of his professional integrity may be moulded by the adjudication of an upright judge or blighted by a discovery of any impropriety or injustice in the court. It is here that the Crown protects society by seeking to have the offender convicted by proper methods and punished in a fashion to deter future offences and to insist that the innocent are not opposed. Here the accused is entitled to expect a presiding justice who will consider his case free from any preconceived or irrelevant considerations, without partiality, and in the best traditions of our jurisprudence. The quality of the judiciary to a great extent determines the quality of justice. The court is more than an instrument of justice. It also enjoys an important educational and symbolic significance. It is called upon to articulate the community's views concerning the individual's right in relation to the rest of society. Courts can only be as effective as the judges who preside over them. It is because of this that society expects much of its magistracy.

Hereunder I set forth some quotations referable to what is expected of a judge or magistrate.

1. Bacon [Letter to Villiers, Duke of Buckingham, 1616 (when he became a favourite to King James)]

   "Judges must be chaste as Caesar's wife, neither to be, nor so much as suspected in the least to be unjust."

   In Bacon's Essay "of Judicature":

   "Judges ought to be more learned than witty; more reverend than plausible; and more advised than confident. Above all things, integrity is their portion and proper virtue."

   The above two quotations appear in *A Manual for Ontario Magistrates,* Bigelow S.T., Queen's Printer, 1962, at p. 173 in Chapter 25 entitled "Some Celebrated Quotations for Magistrates To Ponder On."

2. In "Trial Judge" Simon and Schuster, New York, 1952, Mr. Justice Bernard Botein states:

"There is a modern version of Lord Chancellor Lyndhurst's definition of a good Judge: 'First, he must be honest. Second, he must possess a reasonable amount of industry. Third, he must have courage. Fourth, he must be a gentleman. And then, if he has some knowledge of law, it will help'."

3. At the Massachusetts Constitutional Convention of 1853, Debates and Proceedings 800, Rufus Choate stated:

"He [a Judge] shall know nothing about the parties, everything about the case. He shall do everything for justice; nothing for himself; nothing for his friend; nothing for his patron; nothing for his sovereign.

In the first place, he should be profoundly learned in all the learning of the law, and he must know how to use that learning.

In the next place, he must be a man, not merely upright, not merely honest and well-intentioned—this, of course—but a man who will not respect persons in judgment.

And finally, he must possess the perfect confidence of the community, that he bear not the sword in vain. To be honest, to be no respecter of persons, is not yet enough. He must be believed to be such. . . . I claim that he be a man towards whom the love and trust and affectionate admiration of the people should flow; . . ."

[Manual, pp. 178-9.]

4. In *Martin v. Mackonochie* (1878), 3 Q.B.D. 730, at 775, Chief Justice Cockburn stated:

"[A judge] cannot set himself above law which he has to administer, or make or mould it to suit the exigencies of a particular occasion."

[Manual, p. 180.]

5. From "The History of the Pleas of the Crown," (1736) Sir Matthew Hale (appointed Judge of the Court of Common Pleas in 1653, Chief Baron of the Exchequer in 1660, and Lord Chief Justice of King's Bench in 1671) put forth—Lord Hale's Rules for His Judicial Guidance. Things Necessary to be continually had in Remembrance—

"1. That in the administration of justice I am entrusted for God, the king and the country; and therefore,

2. That it be done, 1st, uprightly; 2ndly, deliberately; 3rdly, resolutely.

16. To abhor all private solicitations, of what kind soever, and by whomsoever, in matters depending.

17. To charge my servants; 1st, not to interpose in any business whatsoever; 2nd, not to take more than their known fees; 3rd, not to give any undue precedence to causes; 4th, not to recommend counsel."

[Manual, pp. 183-4.]

In *The Queen v. The Justices of Great Yarmouth,* 8 Q.B.D. 525, Mr. Justice Field said:

> "The administration of justice ought not only to be pure in itself, and capable of being demonstrated to be so, but nothing should be done by those who are administering it to throw on it a substantial doubt."

In *The Queen v. Huggins* (1895), 1 Q.B. 563, Mr. Justice Wills said:

> "It is impossible to overrate the importance of keeping the administration of justice by magistrates clear from all suspicion of unfairness."

The above quotations were referred to and approved of in our own court by Meredith, C.J. in *The Queen v Steele,* 26 O.R. 540.

In *Rex v. Handley* (1921), N.S.S.C.R. 38, Ritchie, E.J. at p. 40 states:

> "The Legislature has thought proper to make the decisions of Stipendiary Magistrates, final, and it is impossible to overrate the importance of having justice as administered by them command the respect of the public."

In his report to His Excellency, the Governor General in Council, concerning the conduct of a Supreme Court Judge, dated August 11th, 1966, The Honourable Ivan C. Rand, C.C., Q.C., LL.B., stated at p. 92:

> "The one absolute condition required of a Judge is a free mind, untrammelled in judicial action by foreign or irrelevant interests, relations or matters which might color or distort judgment.
>
> Judges are human beings and they are subject to patterns of thought, attitudes and emotional responses passed down in their societies through centuries. But the mind possesses the

faculty of becoming aware of much of its own tendencies; and, apart from deeply implanted assumptions of the subconscious, it can be affirmed that in the overwhelming majority of the judicial officers of this country, issues presented are dealt with as if the parties before them were anonymous. That the dangers of close acquaintance and intimate personal relations are to be guarded against by abstention from any participation in matters which may involve them, is a rule ethically obligatory in our courts."

And at p. 95 also stated:

"He is sworn to the administration of justice as our evolving ethical intelligence has fashioned it; but that obligation is not limited to the adjudicative role. He comes under another but equally sensitive duty, to respect the law which he administers and to promote its processes to their proper ends. For a judge in his private capacity so to impede and defeat those processess is a grave dereliction, a gross infraction of the canons of conduct governing him."

And at p. 97 he continued:

"It is not that disabling acts must reach to criminality, although they may; and a number of possible modes of behaviour were suggested as relevant to the test to be applied. When the function of the judge is fully sensed, to hear, weigh, and, according to law, to decided justly, to do so in a manner which fair-minded persons acting normally, expressing in fact enlightened public opinion, would approve, determining unfitness in a judge, at least in the statement of principle, does not perhaps present as much difficulty as might be imagined. That principle would seem to be this: would the conduct, fairly determined in the light of all circumstances, lead such persons to attribute such a defect of moral character that the discharge of the duties of the office thereafter would be suspect?; has it destroyed unquestioning confidence of uprightness, of moral integrity, of honesty in decision, the elements of public honour? If so, then unfitness has been demonstrated."

In Ontario, legislation is silent with regard to the general ethical standards expected of magistrates. Section 3 of The Magistrates Act, (*supra*) , is as follows:

"3. (1) Except as provided in subsection 2, magistrates shall hold office during pleasure.

(2) A magistrate who has held office for two years may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if,

(a) the circumstances respecting the misbehaviour or inability are first inquired into; and

(b) the magistrate is given reasonable notice of the time and place appointed for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf."

The Honourable J. C. McRuer, S.M., Q.C., LL.D., in his Report on the Inquiry into Civil Rights, Report No. 1, Volume 2, at p. 541, makes the following comment on the above statutory provision:

> "To give greater powers of removal than are contained in this section would be an unwarranted interference with the independence of magistrates. However, there should be some clarification of what is meant by 'misbehaviour or . . . inability to perform his duties properly', . . ."

AMERICAN CANONS OF JUDICIAL ETHICS

In 1924, the American Bar Association adopted certain "Canons of Judicial Ethics" which have since been incorporated into the laws of many states through Supreme Court rule or legislative action. It is perhaps useful here to quote certain relevant portions of these Canons for the purpose, as set forth in the Preamble thereof, of "indicating what the people have a right to expect from them [judges]":

> *"Judicial Canon 4. Avoidance of Impropriety*
>
> A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behaviour, not only upon the Bench and in the performance of judicial duties, but also in his every day life, should be beyond reproach.
>
> *Judicial Canon 13. Kinship or Influence*
>
> A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

Judicial Canon 24. Inconsistent Obligations

A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

Judicial Canon 33. Social Relations

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element in influencing his judicial conduct.

Judicial Canon 34. A Summary of Judicial Obligation

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity."

It is to the credit of the judiciary that in the history of our country prior hereto only three Commissions have issued to inquire into the conduct of a judge. In no such inquiry was the deportment of the judicial officer an association of the type that was revealed by the evidence herein.

If it be thought that such standards require too much of the judiciary, one is reminded of the dignity and responsibility that attends the office. He who passes judgment on others must be respected by the one so judged and by the public generally. He must keep himself free of criticism. The Right Honourable John R. Cartwright, Chief Justice of Canada

in an address to a group of graduating law students this year, expressed this thought in better terms as follows:

> "We must ever remember that privilege entails responsibility, indeed most of us first learned this rule in familiar words of more ancient origin and of higher authority; —unto whomsoever much is given of him shall be much required."

CONCLUSIONS AS TO FREDERICK J. BANNON

From the foregoing facts and circumstances the following conclusions have been reached by me:

(a) From the time of his appointment until his suspension, Frederick J. Bannon regularly associated with and was on terms of intimacy with one Vincent Alexander, a person of criminal record and propensities who professed to have sufficient influence with magistrates and public officials to gain advantage for those accused who sought his services and remunerated him therefor. Bannon allowed such person to discuss cases that were pending before him and to suggest the punishment that should be imposed. When it became apparent to him that Alexander was collecting money from accused under such pretences he continued to assist him by surreptitiously obtaining information as to matters of bail and adjournments, and made recommendations as to what judge would be preferable to try the case, and generally caused his office to be under a cloud of suspicion of impropriety on his part, and was generally guilty of conduct which caused the public to lose confidence in the administration of justice in the City of Toronto and County of York. His early flagrant abuse of the elementary rules of propriety on the Bench were so fundamentally wrong as to lead to the conclusion that he had little respect for the obligations of his office from the beginning.

(b) When a warrant was issued for the arrest of Alexander on a criminal charge in May, 1968, Bannon knew of the former's whereabouts and communicated with him before his arrest but failed to inform police officers of these facts and attempted to influence the Crown Attorney and presiding Magistrate as to the amount of bail on which Alexander should be released.

(c) He obtained from one Miss Dorothy Mildred Gardhouse Garbutt the sum of Ten thousand Dollars for Alexander by pretending to her he was securing for her a first mortgage on Alexander's home. The true facts, which were well known to Bannon, were that such property was subject to a first mortgage for Twenty thousand five hundred dollars and a second encumbrance for One thousand seven hundred and fifty dollars and that it was also posted as security for Alexander's bail in the amount of Ten thousand dollars. Such money has been paid back since the hearing herein. His conduct in this transaction was fraudulent. At the time he was also still acting as a solicitor contrary to the provisions of The Magistrates Act hereinbefore specified.

(d) Knowing the disreputable type of person Alexander was, Bannon entered into a joint venture with him in the purchase of real estate with the intent they might resell the same at a profit before the time for closing the purchase thereof arrived, and actually did accomplish such purpose.

By virtue of all these facts I am forced to the conclusion that Frederick J. Bannon was guilty of such gross misbehaviour in his office as magistrate to render himself totally unfit therefor.

MAGISTRATE GEORGE W. GARDHOUSE

George William Gardhouse, Q.C. of Toronto, was appointed a Deputy Magistrate by Order of His Honour the Lieutenant Governor of the Province of Ontario dated the 26th day of March, 1964, pursuant to the provisions of The Magistrates Act, (*supra*), to be effective May 1st, 1964. On September 1st, 1965, he was made a Magistrate. He graduated from McMaster University and thereafter attended Osgoode Hall and was called to the Bar in 1935. He thereafter carried on a general practice of law consisting of real estate, conveyancing, estate administration and police court work until such appointment and is now in his sixty-first year.

Alexander was never a client of Magistrate Gardhouse. He had acted for the father on one occasion and Alexander thereafter referred cases to him occasionally. They both lived in the same general area of Toronto. There was never any

familiar relationship between them. Alexander had appeared before him in Willowdale Police Court charged with theft of goods of a value less than Fifty dollars on August 27th, 1964, when such Magistrate then imposed a fine of Two hundred and fifty dollars and in default thereof, to two months imprisonment. No one had approached or discussed such case with the Magistrate before it was heard. The penalty imposed was a proper one under all the circumstances.

Sometime during the past winter, Alexander went to such Magistrate's home and gained entrance thereto by saying he wanted to speak to him about a personal matter. After he was in the home and conversed about other matters he asked Magistrate Gardhouse about a case that was pending against him. The Magistrate quite properly advised him to see his lawyer about the matter that he pretended was the subject of his enquiry.

On March 9th of this year the Magistrate's wife died. Shortly thereafter Alexander came pretending his purpose to be to offer his sympathies. I take it that the Magistrate would not have invited him into his home on this occasion but for the alleged purpose of the call. Before leaving, he said he had been tried by Magistrate Rennicks on a charge of unlawfully breaking and entering premises at Weston Road and that judgment had been reserved. He related to Magistrate Gardhouse his version of the evidence that had been given against him. Such Magistrate indiscreetly volunteered the opinion that he did not feel he could convict anybody on that type of evidence. Alexander then asked Magistrate Gardhouse if he would express such opinion to Magistrate Rennicks. He replied he would not do so, and did not speak to Magistrate Rennicks or anyone else about the matter.

On March 25th Alexander called Magistrate Gardhouse asking him if he had seen that party. It was apparent he was referring to Magistrate Rennicks. Gardhouse replied in the negative and said he was nervous about bothering him any more, and expressed the opinion it would be alright. The transcript of the tape included words being said by the Magistrate as follows: "I'll guarantee you with it." The tape was not clear at this point. There was still clearly some undistinguishable word before "guarantee". This may have changed

the whole meaning of that sentence. I interpret Gardhouse's reply on this occasion as an attempt to get rid of any discussion of the matter. In a subsequent conversation with Bannon, Alexander made it clear that he understood from Gardhouse that he had not and would not speak to Magistrate Rennicks. The latter has made it clear no one did speak to him concerning the case.

It was very indiscreet on the part of Magistrate Gardhouse to allow Alexander to have spoken to him about a case being tried by another magistrate. I think it improper for a magistrate to allow even a Crown Attorney to speak to him about a case, except in the presence of the accused or his counsel. During the course of the evidence, reference was made to a common room in which the presiding magistrates met each morning before opening court at the City Hall. I am convinced that Magistrate Gardhouse had no knowledge at this time of Alexander's association with Bannon or his practice of attempting to influence officials. In all contacts between the two, it was Alexander who always came or called upon Magistrate Gardhouse. In no case did he secure any information or advantage.

On May 2nd Alexander again called Magistrate Gardhouse by telephone to enquire about a notice he had received as to his right to re-elect the form of his trial. Magistrate Gardhouse did not want to be bothered with him but did tell him about his right to re-elect. It is clear that he made it known to Alexander that he did not want to be bothered by him because at the end of the conversation Alexander said, "Okay then George, I'll leave you alone."

Alexander's application for bail on the 16th day of May was heard by Magistrate Wilch. He testified that just before the opening of court on this day at the City Hall Magistrate Gardhouse had said to him that Alexander, who was an old client of Magistrate Bannon's, was making application for bail that morning and, if he saw his way clear, to admit him to bail, or words to that effect. Magistrate Gardhouse denies he made such statement or was present at all on that occasion. He states he was at the Scarborough Court that morning and could not possibly have been present in the City Hall on the occasion referred to. There was very considerable documentary *viva*

voce evidence to establish that Magistrate Gardhouse was in fact at Scarborough Police Court at this particular time. Bannon acknowledges that he did on this occasion speak to Magistrate Wilch and make the request of him that the latter attributes to Magistrate Gardhouse.

Magistrate Wilch is a very honourable and reliable person and an excellent magistrate. I am forced to a conclusion that his recollection as to who spoke to him in the matter is in error. He has become confused with a conversation he had with Magistrate Gardhouse about another case in which their conversation was not open to question. In view of all of the evidence Magistrate Gardhouse could not have spoken to him about Alexander's application for bail.

CONCLUSIONS AS TO MAGISTRATE GEORGE W. GARDHOUSE

I therefore find there has been no misbehaviour on the part of Magistrate Gardhouse either with Vincent Alexander or any other person and that he is fully capable of performing his magisterial duties properly.

I wish to express my recognition of the capable and impartial manner in which Mr. Frank W. Callaghan, Q.C. has performed his duties herein in the best tradition of Commission counsel. I also wish to thank all other counsel appearing for their assistance. Such help has greatly expedited the hearing and elicited the true facts. I also desire to express my appreciation for the help given me by Mr. Allan Johnson, a recent graduate and Law Clerk at Osgoode Hall this term.

All of which is respectfully submitted.

1968.

Commissioner.

APPENDIX A

STAFF OF COMMISSION

Frank W. Callaghan, Q.C.	Commission Counsel
D. A. McKenzie	Assistant Commission Counsel
Allan Johnson	Law Clerk
Norma Pullen	Commission Secretary

APPEARANCES

G. A. Martin, Q.C., and R. J. Carter	Counsel for Magistrate George W. Gardhouse
Arthur Maloney, Q.C., and P. T. Matlow	Counsel for Magistrate Frederick J. Bannon
G. W. Ford, Q.C.	Counsel for Metropolitan Toronto Police Force
D. G. Humphrey, Q.C.	Counsel for Vincent Charles Alexander
J. Karfilis	Counsel for Diane M. Baker
J. B. and D. L. Pomerant	Counsel for Charles Bagnato
Alan Eagleson	Counsel for James Squigna

Mr. A. A. Borovoy has also filed a Brief on behalf of Canadian Civil Liberties Association.

APPENDIX B

HEARINGS

Public hearings were held at the Municipality of Metropolitan Toronto Court House from July 15th to 19th inclusive, and again on July 22nd, 1968.

APPENDIX C

Witnesses called are listed below:

Roy Edwin Soplet
John Ross Wilson
James Rennicks
Frederick Clair Hayes
Christopher Michael Speyer
Norman Gerald Matusiak
James Crossland
Dorothy Mildred Gardhouse Garbutt
Norman Manett
James Squigna
Cleason Martin
Lauchlin McPhee
Diane Marie Baker
Lucien Arthur Beaulieu
Douglas Lewis
Eric Royle Marsden
Earl Brown
James Allen
Lynden Wayne Robinson
Nora Bain
Samuel David Patterson
Peter John Wilch
Joan Elizabeth Barron
Vincent Alexander
Nicholson Duncan McRae
Mathew Allan Dickie
Kelly LaBrash
Frederick James Bannon
George William Gardhouse
John C. Gadsten
Greta Lato

APPENDIX D

LIST OF EXHIBITS

No.	
1	Certified copy of Order-in-Council No. 2594/68, dated 26th June, 1968.
2	Letters Patent dated 26th June, 1968, appointing Mr. Justice Grant a Commissioner.
3	Certified copy of Order-in-Council No. 2593/68, dated 26th June, 1968.
4	Copy of letter dated 15th July, 1968, to the Attorney General from Frederick J. Bannon.
5	Certified true copy of Order-in-Council No. 949/64 dated 25th March, 1964, appointing Mr. George William Gardhouse, Q.C., as a Deputy Magistrate.
6	Certified true copy of Order-in-Council No. 3357/65, dated 15th September, 1965, appointing Deputy Magistrate Gardhouse as a Magistrate.
7	Certified true copy of Order-in-Council No. 5364/67, dated 20th December, 1967, appointing Frederick James Bannon as a Magistrate, effective 1st February, 1968.
8	Certified true copy of Order-in-Council No. 83/68, dated 4th January, 1968, appointing Frederick James Bannon as a Magistrate effective 1st January, 1968.
9	Metropolitan Toronto Police criminal record of Vincent Charles Alexander.
10	Metropolitan Toronto Police non-indictable record of Vincent Charles Alexander.
11	Photostatic copy of long distance toll charges of Frederick J. Bannon.
12	Photostatic copy of long distance toll charges of George W. Gardhouse, Q.C.
13	Photostatic copy of long distance toll charges of V. Alexander.

No.

14(a) Master tape No. 1.

14(b) Master tape No. 2.

14(c) Master tape No. 3.

15 Transcript of tape recordings.

16 Photostatic copy of proceedings in Magistrate's Court, re bail application of Vincent C. Alexander.

17 List of cases before the Ontario Court of Appeal on Wednesday, March 27th, 1968.

18 Photostatic copy of information and court record of Victor Joseph Anthony Hachey.

19 Police photograph and criminal record of Victor Joseph Anthony Hachey.

20 Report of proceedings in Magistrate's Court Room No. 32 Toronto, in the case of Her Majesty the Queen v. Victor Joseph Anthony Hachey.

21 Photostatic copy of information re Joseph Leo Roy St. Louis.

22 Police photograph and criminal record of Joseph Leo Roy St. Louis.

23 Police photograph and criminal record of Charles Pasquale Bagnato.

24 Police photograph and criminal record of Morris William Saltzman.

25 Police photograph and criminal record of Jack Riggs.

26 Photostatic copy of information re Vincent Charles Alexander.

27 Copy of transcript of proceedings re Vincent Charles Alexander before Magistrate Rennicks.

28 Photostatic copy of Crown's file relating to case against Alexander re Busy Bee charge.

29 Form in use in Crown Attorney's Office.

30 Four cheques in favour of F. J. Bannon totalling $10,000.00.

31 Note given by Magistrate Bannon to Miss Dorothy Mildred Gardhouse Garbutt.

No.

32 Certified copy of abstract of title.

33 Certified copy of instrument registered in the Office of Land Titles, the 17th day of June, 1968, in respect of Charge in favour of Miss Garbutt.

34 Bill for work done at the house of Magistrate Bannon.

35 Cheque drawn on the Bank of Nova Scotia, Richmond Hill, in the sum of $1,035.00 dated May 22nd, 1968.

36 Photostatic copy of offer to purchase.

37 Photostatic copy of agreement of sale, on resale of the Ramm property.

38 Cheque drawn on Canadian Imperial Bank of Commerce, Islington, dated April 24th, 1968, in the sum of $1,000.00.

39 Cheque drawn on Canadian Imperial Bank of Commerce, Islington, dated June 3rd, 1968, in the sum of $2,000.00.

40 Cheque drawn on Canadian Imperial Bank of Commerce, Islington, dated June 3rd, 1968, in the sum of $1,000.00.

41 Cheque drawn on Canadian Imperial Bank of Commerce, Islington, dated June 3rd, 1968, in the sum of $1,000.00.

42 Cancelled cheque dated April 23rd, 1968 signed by F. J. Bannon in the sum of $1,000.00.

43 Information in regard to charge of possession of narcotics against Diane Baker, alias Brown.

44 Transcript of preliminary hearing of Diane Baker, alias Brown.

45 Criminal record of Diane Marie Baker.

46 Statement of Edward Rutman.

47 Letter from Bank of Montreal together with photostatic copies of cheque and account card.

48 Photostatic copy of information re Vincent Charles Alexander.

49 Photocopy of information relating to the case of Richard Pogue.

50 Probation order in respect of Richard Pogue.

51 Court calendar for Scarborough Magistrate's Court on May 16th.

No.

52 Information regarding Kalinowski dated May 8th, 1968.

53 Reporter's log of cases at Scarborough Magistrate's Court of 16th May, 1968.

54 Information with respect to Michael Zubresky dated 29th December, 1967.

55 Information against Michael Zubresky, dated October 12th, 1967.

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